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FORMS OF PROCEDURE

IN THE

FEDERAL COURTS

OF THE

UNITED STATES

INCLUDING THE OFFICIAL FORMS UNDER THE BANKRUPTCY ACT, 1898,

WITH NOTES AND SPECIAL REFERENCES TO NINTH EDITION OF

DESTY'S FEDERAL PROCEDURE,

AS REVISED BY M. A. FOLSOM.

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PREFACE.

In selecting Forms for use in Federal practice, the compiler has had access to the actual cases that have appeared in the Ninth Judicial Circuit.

No Circuit Court of the United States has had a greater variety of Federal questions, or more important cases, than the Ninth United States Circuit Court.

Precedents that have been accepted by Hon. Stephen J. Field, assigned to this circuit as early as 1863; Hon. Lorenzo Sawyer, Circuit Judge; Hon. Ogden Hoffman, and Hon. Matthew P. Deady, District Judges for many years, can safely be relied upon.

The present judges of this Circuit, exceptional in ability, have passed upon some important Forms both at law, in equity, and admiralty.

About eighty per cent of the Forms in this book have been secured from this original source. The others have been compiled from various other publications and proper credit given.

C. HARDING TEBBS.

San Francisco,
April, 1899.

6678

CONTENTS.

FORMS OF FEDERAL PROCEDURE.

SYNOPSIS.

Chapter I. Actions at law relating to
Patents.
National banks.
Customs.
Chinese Exclusion Act.
II. Admiralty.
III. Bankruptcy.
IV. Equity.
V. Depositions.
VI. Removal of causes.
VII. Appeal.
VIII. Interstate commerce.
IX. Supreme Court.

CHAPTER I.

ACTIONS AT LAW.

Section I.

Form No. Patents.

1. Declaration on patent reissued.
2. Stipulation for amendment to declaration.
3. Amendment.
4. Answer.
5. Declaration on two patents, one a reissue.
6. Answer.

Section II.

Form No. **National Banks.**

7. Complaint.
8. Answer.
9. Stipulation for amendment of answer.
10. Reply.
11. Judgment.

Section III.

Customs.

12. Petition for review of decision of board of general appraisers by importer.
13. Order for return.
14. Clerk's certificate to copy order and return of service.
15. Findings of fact and conclusions of law.
16. Judgment.
17. Petition for review by collector.
18. Order for return.
19. Judgment.
20. Complaint to recover drawback.
21. Petition for remission of penalty.
22. Petition of informer to share in proceeds of forfeited goods.
23. Information under revenue laws.

Counts in libel of information:

24. When importing ship and port unknown.
25. When merchandise found concealed.
26. When shipowner unknown and goods not in manifest.
27. When goods secretly landed.
28. Affidavit of service on United States.

Section IV.

Form No. **Chinese Exclusion Act.**
29. Affidavit of complaint.
30. Warrant to apprehend.
31. Commissioner's findings and order.
32. Notice of appeal to District Court.
33. Order to take depositions.
34. Judgment of District Court.
35. Bill of exceptions.
36. Petition for writ of error.
37. Assignment of errors.
38. Joinder in error.
39. Writ of error.

CHAPTER II.

ADMIRALTY.

Section. **Scheme of Precedents.**
I. Nature of libels under admiralty rules.
II. Parties respondent.
III. Skeleton libel under Admiralty Rule 23 with:
(a) Forms of commencements.
(b) Forms of conclusions.
IV. Libels in various cases.
(a) Average.
(b) Bottomry and respondentia.
(c) Charter.
(d) Collision.
(e) Cargo and passengers.
(f) Liens.
(g) Limitation of liability.
(h) Marine insurance.
(i) Personal injuries.

Section.

(k) Salvage.
(l) Seamen.
(m) Pilotage.
(n) Towage.
(o) Miscellaneous.

V. Claims.
VI. Answers and replications.
VII. Warrants, monitions, and citations.
VIII. Bonds and stipulations.
IX. Motions and notices.
X. Interlocutory orders.
XI. Decrees.
XII. Petitions.
XIII. Exceptions.
XIV. Appraisers.
XV. Miscellaneous.

Section I.

Nature of Libels under Admiralty Rules.

Section II.

Parties Respondent.

Form No. Section III.

40. Skeleton libel (Ad. R. 23).
41. Commencement of libel.
41 a. In personam against master.
41 b. In personam against owner or other person.
41 c. In rem against vessel.
41 d. In rem against vessel and in personam against master.
41 e. In rem against vessel, cargo, and freight.
41 f. In rem against freight and in personam against master.
41 g. For warrant of arrest for personal damage.

Form No.
42. Conclusions of libel.
42 a. In personam.
42 b. In rem against vessel.
42 c. In rem, additions, when includes cargo and freight.
42 d. In personam for warrant of arrest.
42 e. In rem against cargo.

Section IV.

Libels.

43. Libel—general average.
44. Libel—bottomry.
45. Libel—respondentia.
46. Libel—charter-party in personam.
47. Libel—charter-party (another form).
48. Libel—demurrage.
49. Libel—demurrage, detention in loading.
50. Libel—collision, general scheme of.
51. Libel—collision, steam and steam.
52. Libel—collision, in personam—damages.
53. Libel—collision, in rem—steam and ship.
54. Libel—collision intervening libel.
55. Libel—collision intervening by administrator.
56. Libel—freight charges in personam.
57. Libel—freight charges in personam.
58. Libel by passenger for breach of contract to carry.
59. Libel—petition in intervention on last libel. No. 58.
60. Libel—supplies in rem.
61. Libel—intervention for supplies.
62. Libel—intervention, repairs and material.
63. Libel—marine insurance.
64. Libel—marine insurance (another form).
65. Libel—marine insurance, personal effects.
66. Libel—marine insurance, damage to cargo.

Form No.
67. Libel—caption by owner for limitation of liability.
68. Petition for limitation of liability, personal injuries.
69. Petition for limitation of liability, personal injuries.
70. Libel—personal injuries in rem.
71. Libel—personal injuries in personam.
72. Libel—salvage, in rem.
73. Libel in intervention, salvage.
74. Libel—(another form).
75. Libel—wages.
76. Libel—pilotage, outward and inward.
77. Libel—pilotage offered and refused.
78. Libel—towage.
79. Libel—possessory, to obtain possession of ship.
80. Libel—possessory, to obtain possession of merchandise.
81. Libel—petitory, to establish title to ship.
82. Libel of information.
83. Cross libel by way of answer.
84. Interrogatories annexed to libel in rem.

Section V.

Claims.

85. Claim to ship by owner for self and others.
86. Claim by owner.
87. Claim to cargo.
88. Claim to part of cargo.
89. Claim by agent of owner.
90. Claim by master for owner.
91. Claim on petition for limitation of liability.

Section VI.

Form No. **Answers and Replications.**

92. Answer to libel on bottomry.
93. Answer to libel for freight charges.
94. Answer to libel on marine insurance.
95. Answer to libel on marine insurance (another form).
96. Answer to libel for personal injuries.
97. Answer by stipulation to libel on marine insurance.
98. Replication to claim and answer.
99. Answer to interrogatories.

Section VII.

Warrants, Monitions, and Citations.

100. Monition to cite to appear.
101. Monition to cite to appear in personam.
102. Monition to cite to answer libel in intervention.
103. Monition in suit for limitation of liability.
104. Monition (another form).
105. Warrant of arrest in personam.
105 a. Warrant of arrest, attachment clause and summons to garnishee.
106. Warrant of arrest, cause of tort.
107. Warrant of arrest of ship.
108. Return to writ No. 107 and citation.
109. Affidavit of publication of citation No. 108.
110. Writ of attachment of ship and return.
111. Return to writ after release of ship on bond.
112. Citation to show cause.
113. Citation to appear, and affidavit of publication.
114. Citation after seizure to show cause against final decree.

Section VIII.

Form No. **Stipulations and Bonds.**
115. Stipulation for costs (libelant).
116. Stipulation for costs (respondent).
117. Stipulation by intervenor.
118. Stipulation by claimant.
119. Stipulation for release of vessel on filing bond.
120. Stipulation for release of ship after appraisement.
121. Bond to obtain release of ship.
122. Bond for appearance.
123. Bond in bottomry.
124. Bond in respondentia.

Section IX.

Motions and Notices.

125. Motion for order to sell ship.
126. Motion for findings and decree in accordance with mandate.
127. Motion for order for process to issue.
128. Motion for order to marshal to return ship.
129. Notice of motion for interlocutory order of sale.

Section X.

Interlocutory Orders.

130. Caption to orders and decrees.
131. Order for substitution of administrator for libelant.
132. Order for filing amended libel nunc pro tunc.
133. Order for entry of default on return of monition.
134. Order on proclamation for entry of default.
135. Order to take libel pro confesso for default of answer.
136. Order—condemnation by default.

Form No.
137. Order directing marshal to release ship.
138. Order for sale, interlocutory.
139. Order for sale of vessel found perishable.
140. Order for appraisement and delivery of perishable goods.
141. Order sustaining exceptions to libel.
142. Order sustaining exceptions and allowing amendment.
143. Order—proclamation.
144. Order allowing supplemental answer to be filed.
145. Order dismissing libel for desertion.
146. Order for rehearing.
147. Order staying proceedings by indorsement.
148. Order granting rehearing.
149. Order for decree.
150. Order for decree of salvage.
151. Order for appraisement on petition for limitation of liability.
152. Order appointing trustee.
153. Order for transfer of ship to trustee on petition for limitation of liability.
154. Order for monition, limitation of liability.
155. Order for reference to commissioner.
156. Order confirming report and for summary judgment.
157. Order sustaining exceptions to report.
158. Order to show cause.
159. Order for issue of warrant of arrest in rem.
160. Order for consolidation of libel and cross-libel.

Section XI.

Decrees.

161. Decree sustaining exceptions to answers.
162. Decree dismissing libel.
163. Decree dismissing libel (another form).

Form No.
164. Decree for libelant with reference to commissioner.
165. Decree for libelant, the like, case of damage.
166. Decree confirming commissioner's report.
167. Decree, final, in salvage.
168. Decree, final, insurance.
169. Decree, final, collision.
170. Decree, final, and for sale.
171. Decree, final—money claim.
172. Order on petition for limitation of liability.
173. Decree limiting liability.
174. Order to file mandate.
175. Decree in accordance with mandate.
176. The like.

Section XII.

Petitions.

177. Petition of administrators to prosecute for deceased libelant.
178. Petition of receiver for order of return of ship.
179. Petition to bring in vessel under Admiralty Rule No. 59.
180. Petition for rehearing.

Section XIII.

Exceptions.

181. Exceptions to libel.
182. Answer to exceptions.
183. Exceptions to answer.
184. Exceptions to commissioner's report.

Section XIV.

Appraisers.

185. Oath.
186. Appraisement.
187. Return.

Section XV.

Miscellaneous.

Form No.
188. Verification by proctor for absent libelants.
189. Substitution of claimant.
190. Praecipe for monition.
191. Verification of claim by agent.
192. Verification of claim, libel in rem.
193. Return in case of admiralty seizure.
194. Praecipe for appearance of claimant.
195. Commissioner's report.
196. Affidavit on motion for sale of ship as perishable.
197. Petition by marshal for compensation as caretaker.
198. Order for marshal's costs as caretaker.
199. Notice of motion to set aside order for marshal's costs as caretaker.
200. Order denying motion.
201. Stipulation of consent to include other members of crew in libel in intervention of salvage.
202. Costs bill.
203. Writ of execution after final decree.
204. Satisfaction piece.
205. Injunction.

CHAPTER III.

BANKRUPTCY.

206. [1.] Debtor's petition with schedules.
207. [2.] Partnership petition.
208. [3.] Creditor's petition.
209. [4.] Order to show cause upon creditor's petition.
210. [5.] Subpoena to alleged bankrupt.

Form No.
211. [6.] Denial of bankruptcy.
212. [7.] Order for jury trial.
213. [8.] Special warrant to marshal.
214. [9.] Bond of petitioning creditor.
215. [10.] Bond to marshal.
216. [11.] Adjudication that debtor is not bankrupt.
217. [12.] Adjudication of bankruptcy.
218. [13.] Appointment, oath, and report of appraisers.
219. [14.] Order of reference.
220. [15.] Order of reference in judge's absence.
221. [16.] Referee's oath of office.
222. [17.] Bond of referee.
223. [18.] Notice of first meeting of creditor.
224. [19.] List of debts proved at first meeting.
225. [20.] General letter of attorney in fact, when creditor is not represented by attorney at law.
226. [21.] Special letter of attorney in fact.
227. [22.] Appointment of trustee by creditors.
228. [23.] Appointment of trustee by referee.
229. [24.] Notice to trustee of his appointment.
230. [25.] Bond of trustee.
231. [26.] Order approving trustee's bond.
232. [27.] Order that no trustee be appointed.
233. [28.] Order for examination of bankrupt.
234. [29.] Examination of bankrupt or witness.
235. [30.] Summons to witness and return.
236. [31.] Proof of unsecured debt.
237. [32.] Proof of secured debt.
238. [33.] Proof of debt due to corporation.
239. [34.] Proof of debt by partnership.
240. [35.] Proof of debt by agent or attorney.
241. [36.] Proof of debt by agent of secured debt.
242. [37.] Affidavit of lost bill or note.

Form No.
243. [38.] Order reducing claim.
244. [39.] Order expunging claim.
245. [40.] List of claims and dividends to be recorded by referee and delivered to trustee.
246. [41.] Notice of dividend.
247. [42.] Petition and order for sale by auction of real estate.
248. [43.] Petition and order for redemption of property from lien.
249. [44.] Petition and order for sale subject to lien.
250. [45.] Petition and order for private sale.
251. [46.] Petition and order for sale of perishable property.
252. [47.] Trustee's report of exempted property.
253. [48.] Trustee's return of no assets.
254. [49.] Trustee's account.
255. [50.] Oath to final account.
256. [51.] Order allowing account and discharging trustee.
257. [52.] Petition for removal of trustee.
258. [53.] Notice of petition.
259. [54.] Order for removal of trustee.
260. [55.] Order for choice of new trustee.
261. [56.] Certificate by referee to judge.
262. [57.] Bankrupt's petition for discharge.
263. [58.] Specification of grounds of opposition to bankrupt's discharge.
264. [59.] Discharge of bankrupt.
265. [60.] Petition for meeting to consider composition.
266. [61.] Application for confirmation of composition.
267. [62.] Order confirming composition.
268. [63.] Order of distribution of composition.

CHAPTER IV.

EQUITY.

Section I.

Subsection. **Scheme of Precedents.**

1. General frame of bill in equity.
    (a) Different forms of introduction.
    (b) Prayers for relief in special cases.
    (c) Conclusions.
2. Bills of complaint in various cases.
3. Demurrers.
4. Pleas.
5. Answers.
6. Exceptions and replications to answer.
7. Motions and notices of:
    (a) Directed to the bill.
    (b) Directed to the demurrer or plea.
    (c) Directed to the answer.
    (d) Relating to the decree.
8. Orders and decrees on bills.
9. Interlocutory orders.
10. Writ of ne exeat.
11. Restraining orders and injunctions.
12. Receivers.
13. Intervention.
14. Proceedings before a master.
15. Proceedings on sales.
16. Miscellaneous.

Form No. **Subsection 1.**

269. General frame of bill.
270. The title.

Form No.
271. The direction.
272. The introduction.
273. The stating part.
274. The charging part.
275. The jurisdiction clause.
276. The interrogating part.
277. Prayer for relief.
278. Prayer for general relief.
279. Prayer for process.
(a) Different forms of the introduction.
280. One plaintiff v. two or more defendants.
281. Two or more plaintiffs v. one defendant.
282. Executor v. corporation.
283. United States v. corporation and citizen.
284. Corporation v. individuals.
285. Husband and wife v. ————.
286. Wife suing alone v. ————.
287. Wife by next friend v. husband.
288. Same (husband residing abroad).
289. Wife as feme sole.
290. Infants.
291. Lunatics.
292. Assignee of insolvent debtor.
293. A person deaf and dumb.
(b) Prayers for Relief in Special Cases. See Form No. 277.
294. For specific performance of contract.
295. The like—suit by vendor.
296. The like—short form.
297. The like of agreement to execute mortgage of indemnity.
298. The like of contract to make a policy of insurance.
299. For foreclosure of mortgage.

Form No. (Prayer for relief continued.)
300. Another form.
301. For redemption of mortgage—mortgagee in possession.
302. For redemption of personal property.
303. For an accounting of money had and received.
304. For an accounting on termination of partnership.
305. For an accounting of rents and profits of testator's real estate.
306. For an accounting of personal estate of testator.
307. For an accounting by agent.
308. For winding up affairs of partnership.
309. For damages against agent for mismanagement.
310. For cancellation of land patent and deeds.
311. For cancellation of will and deed—fraud alleged.
312. For cancellation of deed.
313. To reform deed on ground of mistake.
314. In bill by assignees to protect estate of insolvent.
315. By next of kin for account and distribution.
316. The like (another form—short).
317. In bill of interpleader.
318. The like—bill by executor.
319. In bill for payment of legacies and to carry trusts of will into execution.
320. To have trust declared as to real estate.
321. The like—as to personalty.
322. For an injunction.
323. Another form.
324. The like as to a patented machine.
325. In bill to quiet title.
326. For production of deeds and papers.

Form No. (c) Conclusions.

327. Prayer for process.
328. The like when government is defendant.
329. Prayer for writ of "ne exeat."
330. Note when interrogatories are to be answered.

Subsection 2.

Bills of Complaint.

331. Bill for sale and foreclosure.
332. Bill to quiet title.
333. The like and for an injunction, etc.
334. Bill for an injunction.
335. Bill to redeem real property by heir of mortgagor.
336. Bill to redeem personal property.
337. Bill for account by broker employed to purchase stocks and to enjoin suit.
338. Bill for dissolution of partnership and injunction to restrain collection of debts.
339. Bill of interpleader by purchaser against different persons claiming payment.
340. Affidavit to bill of interpleader.
341. Bill of revivor.
342. Bill to perpetuate testimony.
343. Amendment to bill.

Bills relating to public lands, see Forms Nos. 528, 529.

Bills relating to patents, see Forms Nos. 531-533.

Bills relating to trademark, see Form No. 541.

Bills relating to copyright, see Form No. 545.

Subsection 3.

Demurrers.

Classification of Demurrers.

Form No.
344. General form.
345. Verification.
346. Counsel's certificate.
347. Demurrer for want of equity.
348. Demurrer for want of legal power to sue.
349. Demurrer that plaintiff has no interest.
350. Demurrer that defendant is answerable to another.
351. Demurrer that defendant has no interest.
352. Demurrer that plaintiff is not entitled to relief prayed.
353. Demurrer that bill does not embrace whole matter.
354. Demurrer for want of parties.
355. Demurrer—the like.
356. Demurrer for multifariousness.
357. Demurrer on ground of statute of frauds.
358. Demurrer to bill of interpleader.
359. Demurrer and answer.
360. Demurrer, plea, and answer.
361. Demurrer for want of jurisdiction.
362. Demurrer for noncompliance with rules of Court.
363. Demurrer for lack of jurisdiction and equity.
364. Demurrer to cross-bill.
365. Demurrer to answer.

Subsection 4.

Pleas.

Form No.
366. General form.
367. Counsel's certificate.
368. Verification.
369. Plea to part and answer as to residue.
370. Plea to the jurisdiction.
371. Plea of infancy.
372. Plea that plaintiff is not administrator as alleged.
373. Plea of former suit pending.
374. Plea of want of proper parties.
375. Plea of account stated.
376. Plea of statute.

Subsection 5.

Answers.

377. General form.
378. The introduction.
379. The conclusion.
380. Another form.
381. Averment of accounts, reference to book.
382. Averment, accounts refused as useless.
383. Admission for purposes of suit—general form.
384. Claims by defendant.
385. Craving leave to refer for certainty.
386. Craving leave to refer to co-defendant's answer.
387. Allegations on information and belief.
388. Allegations of ignorance.
389. Allegations, qualified denial.
390. Allegations, reference to schedule.
391. Allegations, settled account.
392. Vexatious suit, settled account, claim of benefit of defense as if raised by plea or demurrer.

Form No.
393. Want of interest in plaintiff.
394. Claim—benefit of same defense to amended bill as to original bill.
395. Setting up statute of limitations.
396. Another form.
397. Setting up statute of frauds.
398. The like (another form).
399. Where defendant objects to answer particular interrogatories.
400. Statement in answer to prevent plaintiff calling for production of document.
401. Answer and disclaimer.
402. General form of disclaimer.
403. Answer—in suit to enjoin working of mines.
404. Answer and cross-complaint.
405. Supplemental answer.

For answers in suits relating to patents, public lands, etc., see under those heads.

Subsection 6.

Exceptions and replications.

406. Exceptions to bill.
407. Exceptions to answer.
408. Replication to answer.

Subsection 7.

Motions and Notices.

409. General form of notice.
(a) Motions directed to the bill.
410. Motion to amend bill.
411. Motion to add defendant.
412. Motion to file amended bill.
413. Motion to dismiss bill by party on coming of age.

Form No.
414. Motion by plaintiff to dismiss his bill with costs.
(b) Motions directed to demurrer or plea.
415. Motion to withdraw demurrer or plea.
(c) Motions, etc., directed to answer.
416. Motion to amend.
417. The like, by consent.
418. Motion for leave to file supplemental answer by consent.
419. Notice of hearing exceptions to answer.
(d) Motions relating to the decree.
420. Motion to enter a decree nunc pro tunc.
421. Motion to rectify a decree or order.
422. Motion for rehearing.
423. Notice of motion for judgment.
424. Motion for judgment.

Subsection 8.

Orders and Decrees.

425. Decree on suit to quiet title.
426. Decree for foreclosure.
427. Decree—direction for sale in decree of foreclosure.
428. Decree for account of dealings and transactions.
429. Decree for dissolution of partnership.
430. Decree for specific performance of contract.
431. Decree, the like on bill by purchaser.
432. Decree for surrender of mortgaged premises on payment of mortgage money.
433. Decree declaring deed a mortgage.
434. Decree—final decree after mandate
435. Decree for redemption of chattels.
436. Decree on bill of interpleader. Policy of insurance.
437. Decree, revivor.
438. Decree, inspection of documents.

Subsection 9.

Form No. Interlocutory Orders.

439. Order to take bill pro confesso.
440. Order of substitution.
441. Order for leave to file supplemental bill.
442. Order for leave to file amendment to bill.
443. Order sustaining exceptions to answer.
444. Order for leave to amend answer.
445. Order dismissing bill.
446. Order denying petition for rehearing.
447. Order directing filing nunc pro tunc and transmission of record to court of appeals.
448. Order for entry of mandate and for decree.

Subsection 10.

Ne Exeat.

449. Affidavit to obtain order.
450. Order for writ of ne exeat.
451. Writ of ne exeat.

Subsection 11.

Restraining Orders and Injunctions.

452. Restraining order.
453. Bond on restraining order.
454. Order modifying and continuing order.
455. Motion for removal of restraining order.
456. Injunction on notice or ex parte on undertaking as to damages.
457. Order for inquiry as to damages to be paid according to undertaking.
458. Injunction (another form).
459. Undertaking on injunction.
460. Notice of motion to dissolve injunction.
461. Petition to dismiss.

Form No.
462. Notice of petition.
463. Order to file new bond.
464. Order dissolving restraining order.
465. Order dissolving or continuing on motion.
466. Decree of perpetual injunction.

Subsection 12.

Receivers.

467. Prayer for appointment of receiver in bill foreclosing railroad property.
468. Order appointing receivers.
469. Order substituting receiver.
470. Receiver's consent to substitution.
471. Petition by receiver for leave to borrow.
472. Prayer in petition by receiver for leave to issue certificates.
473. Notice of receiver's petition for leave to borrow.
474. Answer to petition.
475. Order authorizing borrowing and issue of certificates.
476. Order for issue of receiver's certificates.
477. Receiver's report with form of certificate issued.
478. Petition for leave to sue receiver.

Subsection 13.

Intervention.

479. Petition in intervention and bill of intervenor.
480. Order to show cause against petition.
481. Introduction to answer.
482. Motion to intervene.

Subsection 14.

Form No. Proceedings Before Master.

483. Motion for reference to master.
484. Order of reference.
485. Summons.
486. Master's certificate.
487. Master's report.
488. Order appointing special master.
489. Report of master.
490. Findings of fact and conclusions of law by master.
491. Exceptions by plaintiff to master's report.
492. Exceptions by defendant to master's report.
493. Decree on appeal from special master's report.
494. Order sustaining exceptions.
495. Order confirming master's report.

Subsection 15.

Proceedings on Sales.

496. Writ or order venditioni exponas.
497. Master's notice of sale.
498. Affidavit of publication of notice.
499. Affidavit of posting of notice.
500. Master's report and return of sale.
501. Motion for confirmation of sale.
502. Order confirming sale.
503. Notice claiming exemption of certain property from sale under decree in foreclosure.
504. Objections to confirmation of sale.
505. Order appointing master to execute deed.
506. Master's report of execution of deed.

Subsection 16.

Form No. Miscellaneous.

507. Praecipe for subpoena.
508. Subpoena ad respondendum.
509. Marshal's return.
510. Alias subpoena ad respondendum.
511. Appearance for defendant.
512. Praecipe for appearance of defendant.
513. Praecipe for default.
514. Petition for leave to file supplemental bill.
515. Notice of application for leave to file bill.
516. Affidavit in support of application.
517. Petition for appointment of guardian ad litem.
518. Affidavit for leave to sue in forma pauperis.
519. Petition for leave to defend in forma pauperis.
520. Petition for a rehearing.
521. Memorandum of costs.
522. Objections to costs.
523. Clerk's ruling on costs.
524. Motion by plaintiff to retax costs.
525. Points on appeal from taxation.
526. Notice of appeal by defendant from taxation.
527. Enrollment.

Section II.

Public Lands.

528. Complaint by corporation against individual.
529. The like—short form.
530. Answer.

Section III.

Patents.

Form No. (a) Bills.

531. Bill for an accounting and injunction.
532. Affidavit to support application for injunction.
533. Supplemental bill where extension of patent granted since commencement of suit.

(b) Allegations in Equity Bills.

534. Patent assigned before suit.
535. Reissue of patent.
536. Death of patentee and grant of letters of administration.
537. Prior adjudication.

(c) Miscellaneous.

538. Restraining order and order to show cause.
539. Reply to order.
540. Order for injunction.

Section IV.

Trademark.

541. Bill in equity, infringement of trademark.
542. Answer.
543. Interlocutory decree with reference to master.
544. Final decree and injunction.

Section V.

Copyright.

545. Bill in equity for infringement.

Appendix.

Scheme of Proceedings on a Bill in Equity for Foreclosure and Sale, and for an Appointment of a Receiver with Reference to the Foregoing Forms.

CHAPTER V.

Section I.

Form No. **DEPOSITIONS.**

546. Notice of taking testimony orally before examiner.
547. Order referring cause to master in chancery.
548. Master's report.
549. Stipulation for use of testimony at trial.
550. Notice of taking testimony orally, short form.
551. Notice of motion for appointment of special examiner.
552. Order fixing time and place for taking testimony.
553. Order appointing special examiner.
554. Order to show cause why time should not be extended.
555. Order extending time.
556. Examiner's certificate at close of testimony.
557. Stipulation reserving questions of relevancy, etc.
558. Order appointing special examiner to take testimony of distant witness orally.
559. Examiner's report.
560. Depositions and certificate.
561. Stipulation for annexing account to depositions.

Section II.

Depositions under Commission.

Form No.
562. Order for dedimus potestatem.
563. Writ of dedimus potestatem.
564. Commissioner's return.

Section III.

Testimony De Bene Esse.

565. Affidavit to obtain commission under equity rule 70.
566. Affidavit to obtain order under R. S. U. S., sec. 863.
567. Notice of taking deposition.
568. Notice of taking deposition, another form.
569. Notice to opposite party of examination.
570. Subpoena ad test.
571. Caption and certificate to depositions.
572. Attachment against witness.

Section IV.

Interrogatories.

573. Stipulation for taking depositions by interrogatories before a foreign notary.
574. Interrogatories.
575. Cross-interrogatories.
576. Certificate and return.
577. Letters rogatory.

Section V.

Miscellaneous.

578. Motion to strike out part of deposition.
579. The like (another form).
580. Order thereon.

Form No.
581. Motion to suppress depositions and parts of depositions.
582. Order thereon.
583. Order to open and publish depositions.
584. Petition for order to re-examine witness.
585. Order thereon.

CHAPTER VI.

REMOVAL OF CAUSES.

Section I.

Federal Questions.

586. Petition involving construction of statutes relating to mining locations.
587. Petition involving construction of Federal statute.
588. Petition by national bank.
589. Petition involving statutes relating to hydraulic mining and for injunction to restrain breach.

Section II.

Diverse Citizenship.

590. Petition by citizen v. citizen of another State.
591. Petition by citizen v. citizen of another State.
592. Petition by citizen v. citizen who has disclaimed and citizen of another State.
593. Petition by citizen v. aliens.
594. Petition by citizen v. alien.

Section III.

Form No. **Separable Controversy.**

595. Petition by citizen v. citizen and citizen of another State.
596. Petition, the like after dismissal of suit against citizens.

Section IV.

Local Prejudice.

597. Petition, general form of.
598. Affidavit in support of petition.
599. Writ of certiorari for removal.

Section V.

Removals on Other Grounds.

600. Petition for removal from territorial court after admission to statehood.
601. Order of court transferring cause.
602. Clerk's certificate to transferred record.

Section VI.

Actions Against Revenue Officers.

603. Petition under sec. 643, R. S. U. S.
604. Order for writ of certiorari.
605. Writ of certiorari.

Section VII.

606. Bond on removal, general form.
607. Justification of sureties.

Section VIII.

Form No. Miscellaneous.

608. Notice of motion for order of removal.
609. Order for removal.
610. Clerk's certificate.
611. Notice of removal.
612. Praecipe for appearance.
613. Plea in abatement to petition for removal.
614. Demurrer and answer to plea.
615. Motion to remand on ground of no jurisdiction.
616. Order remanding cause.
617. Writ of certiorari to compel clerk to certify record.
618. Conclusion of petition for removal.
619. Verification of petition by petitioner.
620. Verification of petition by attorney.

CHAPTER VII.

APPEAL.

Section General Scheme.

I. Bills of exceptions with notices and orders relating thereto.
II. Petitions for writ of error and orders relating thereto.
III. Petitions on appeal and orders relating thereto.
IV. Assignments of errors.
V. Bonds on appeal and supersedeas.
VI. Writs of error and returns thereto.
VII. Citations and returns thereto.
VIII. Writs of mandate and consequent orders.
IX. Proceedings in supreme court of the United States.
X. Miscellaneous proceedings and petition for rehearing.

Section I.

Bills of Exceptions, Notices, and Orders Relating Thereto.

Form No.

621. Notice of application for extension of time to prepare bill of exceptions and demurrer to evidence.

622. Order thereon.

623. Bill of exceptions (action at law).

624. Bill of exceptions, another form (patent action at law).

625. Bill of exceptions No. 1, on overruling of demurrer.

626. Bill of exceptions No. 2, same cause on conclusion of case.

627. Objections to defendant's proposed bill of exceptions.

628. Notice of dissent from proposed amendments to bill of exceptions.

629. Order for amendment of bill of exceptions.

630. Order settling bill of exceptions.

631. Order, the like, another form.

632. Bill of exceptions and demurrer to evidence.

633. Order allowing amendments.

634. Order settling same.

635. Notice of filing.

Section II.

Petitions for Writ of Error and Orders.

Form No.
636. Petition for writ and supersedeas by defendant.
637. Order allowing writ.
638. Petition for writ by defendant (another form).
639. Oral notice of appeal (plaintiff suing in forma pauperis).
640. Petition for writ (forma pauperis).
641. Order allowing writ, same action.

Section III.

Petitions on Appeal and Orders.

642. Petition (district court) with allowance indorsed.
643. The like (circuit court.)
644. Order thereon.
645. Petition for order allowing appeal in patent case by unsuccessful plaintiff.
646. Order thereon.
647. Petition for order allowing appeal from final decree made after mandate on former appeal.
648. Order thereon with directions as to record.
649. Petition for order allowing appeal against interlocutory injunction under sec. 7, Evarts Act, March 3, 1891.
650. Order thereon.
651. Notice of appeal by libelant.
652. Petition for allowance of appeal, admiralty.
653. Notice of appeal, admiralty.
654. Petition for appeal, admiralty.
655. Order thereon, admiralty.

Section IV.

Form No. **Assignments of Error.**

656. General forms of commencement.
657. The like in admiralty.
658. Errors commonly assigned—errors assigned in suits for.
659. Canceling land patent.
660. Damages for selling patented goods.
661. Infringement of patent.
662. To recover money due under policy—overruling demurrer to evidence.
663. Infringement of patent.
664. Infringement of patent.
665. Appeal from interlocutory injunction under sec. 7, Evarts Act.
666. On marine insurance, admiralty.
667. The like—another suit, admiralty.
668. The like—another suit, admiralty.

Section V.

Appeal Bonds and Orders.

669. Order fixing amount of bond on writ of error.
670. Bond on writ of error.
671. Bond on writ for costs.
672. Bond on appeal under sec. 7, Evarts Act.
673. Bond on appeal.
674. Bond on appeal, admiralty.
675. Bond on appeal, admiralty, another form.
676. Stipulation as to amount of bond.
677. Order pursuant to stipulation.
678. Bond.

Section VI.

Form No. Writs of Error and Answers.

679. Writ to district or circuit court and answer.
680. Writ to State supreme court.
681. Writ to district court or territory.
682. Introduction in writ to district court.

Section VII.

Citations and Returns.

683. Citation to circuit court of appeals or supreme court and return with marshal's fees.
684. The like admission of service.
685. Citation—admiralty.
686. Another form with return.
687. Marshal's return to citation.

Section VIII.

Mandate.

688. Writ of mandate to district court.
689. Writ of mandate to circuit court.
690. Writ of mandate from supreme court.
691. Order reversing decree after mandate (see admiralty).
692. Final decree after mandate (see equity).

Section IX.

Supreme Court Proceedings.

693. Praecipe for appearance.
694. Motion to dismiss or affirm.
695. Various grounds of motion to dismiss.
696. Notice of submission of motion.
697. Assignment of errors.

Form No.
698. Joinder in error.
699. Judgment—error to state court.
700. Certificate of clerk under supreme court rule 9.
701. Certificate of questions by circuit judges.
702. Petition for writ of certiorari.
703. Petition, prayer, writ of certiorari for diminution of record.
704. Order on petition.
705. Writ of certiorari.

Section X.

Miscellaneous.

706. Order extending time to sue out and serve writ of error.
707. Order extending time to file writ of error.
708. Waiver of joinder on appeal.
709. Stipulation as to making up record.
710. Stipulation as to printing record.
711. The like, another form.
712. Order extending time to file transcript.
713. Praecipe for transcript.
714. Clerk's certificate to transcript.
715. Order to send up original exhibits.
716. Petition for rehearing after appeal below.
717. Order dismissing cause on motion filed.
718. Order dismissing cause on call.
719. Order dismissing cause for failure to print.
720. Order dismissing cause under rule 5.
721. Petition for summary judgment against sureties to appeal bond.
722. Order to show cause thereon.
723. Order for summary judgment.

CHAPTER VIII.

INTERSTATE COMMERCE.

724. Indictment of president of a railroad company for breach of interstate commerce act.

CHAPTER IX.

SUPREME COURT OF THE UNITED STATES.

Section I.

Prerogative Writs.

(a) Writ of Error, see Chapter VII.

(b) Mandamus.

725. Writ.

(c) Prohibition.

726. Rule to show cause against issue.
727. Return to rule.
728. Writ.

(d) Certiorari.

729. Writ.

(e) Injunction.

730. Writ.

Section II.

Miscellaneous.

731. Subpoena, original jurisdiction.

FORMS OF FEDERAL PROCEDURE.

CHAPTER I.

ACTIONS AT LAW.

Section I.

PATENTS.

No. 1.

Declaration on Patent Reissued. (a)

[Title of Court and Cause.]

Edwin T. Earl, a citizen of the United States and of the State of California, plaintiff herein, by John H. Miller and John L. Boone, his attorneys, complains of Robert Graham, an inhabitant of the Northern District of California, defendant, of a plea of trespass on the case.

That heretofore, to wit, on the 22nd day of December, A. D. 1890, plaintiff was the original and first inventor of a certain new and useful invention, towit, a ventilator and combined ventilator and refrigerator car, a more particular description of which will be found in the letters patent hereinafter referred to, and to which special reference is hereby made.

That said invention was not known to or used by others in this country, nor patented nor described in any printed publication in this or any foreign country before the invention thereof by plaintiff, and at

the time of his application for a patent therefor, as hereinafter alleged, had not been in public use nor on sale in the United States more than two years, nor had the same been abandoned.

That on said 22d day of December, A. D. 1890, the plaintiff herein duly and regularly filed in the patent office of the United States an application praying for the granting and issuing to him of letters patent of the United States for said invention, and, after proceedings duly and regularly had and taken in the matter of said application, to wit, on the 22d day of December, A. D. 1891, letters patent of the United States bearing date on that day, and numbered 465615, were granted, issued and delivered to the said plaintiff, whereby there was granted to him, his heirs and assigns, for the full term of seventeen years from said last-named day, the sole and exclusive right and liberty to make, use and vend said invention throughout the United States of America and the territories thereof.

That said letters patent were issued in due form of law under the seal of the patent office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions.

That said letters patent were inoperative and invalid by reason of a defective and insufficient specification, and that said error and defect arose from inadvertence, accident, and mistake, and without any fraudulent or deceptive intention on the part of said plaintiff; that within a reasonable time after the discovery by plaintiff of the defect in such specification, and the

said inoperativeness and invalidity of said letters patent by reason thereof, to wit, on the 17th day of January, A. D. 1893, the said plaintiff duly surrendered said letters patent to the Commissioner of Patents of the United States, and filed an application praying that the said letters patent might be reissued for the purpose of curing and remedying said error and mistake.

That such proceedings were duly and regularly had and taken in the matter of said application for said reissue, that thereafter, to wit, on the 18th day of April, A. D. 1893, the said Commissioner of Patents of the United States did cause a new patent for the same invention, and, in accordance with a corrected specification, to be issued to the plaintiff herein, his heirs and assigns for the unexpired part of the term of the original patent.

That the said patent so reissued as aforesaid was issued in due form of law under the seal of the patent office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, and was and is numbered, Reissued Letters Patent No. 11324, and bears date on the 18th day of April, A. D. 1893, and on said last-named day was delivered to the plaintiff, whereby there was granted and secured to him, his heirs and assigns for the residue then unexpired of the said term of seventeen years from the 22nd day of December, A. D. 1891, the sole and exclusive right, liberty and privilege to make, use and vend the said invention throughout the United States of America and the territories thereof.

That said reissued letters patent were and are for the same invention as that for which the original letters patent were granted, and prior to the issuance thereof all proceedings were had and taken which

were required by law to be had and taken prior to the reissuance of letters patent for new and useful inventions, which said reissued letters patent are hereby specially referred to for further and fuller description of the invention therein patented, and are ready in court to be produced by the plaintiff, or a duly authenticated copy thereof.

That ever since the issuance of said letters patent the plaintiff herein has been and is now the sole owner and holder thereof and has practiced the invention described and claimed therein, and has made and used large numbers of cars embodying the said invention, and has never acquiesced in any invasion of his rights thereunder.

Yet notwithstanding the premises, but well knowing the same, and contriving and intending to injure the plaintiff, and in violation of the rights secured to the plaintiff by said letters patent, and within two years last past, the defendant herein, Robert Graham, has wrongfully and unlawfully and without the authority, license or consent of the plaintiff, made, used and sold many cars containing and embodying the invention described, claimed and patented in and by the said reissued letters patent, and has infringed the exclusive rights secured to the plaintiff by the said reissued letters patent, contrary to the statutes of the United States in such cases made and provided, whereby the plaintiff has been greatly injured and damaged, and has sustained actual damages thereby, to wit, in the sum of $20,000.

Wherefore, by force of the statutes of the United States, a right of action has accrued to the plaintiff to recover such actual damages and such additional amount, not exceeding in the aggregate three times the amount of the actual damages, as the Court may see fit to adjudge besides the cost of suit, and yet the

defendant, though often requested, has not paid the same or any part thereof but has refused and still refuses to pay the same, and therefore the plaintiff brings this action.

JOHN H. MILLER, and
JOHN L. BOONE,
Plaintiff's attorneys.

(a) Reported 48 U. S. App. 691.

No. 2.

Stipulation for Amendment to Declaration.

[Title of Court and Cause.]

It is hereby stipulated and agreed by and between the parties to this suit that the plaintiff herein may file an amendment to his declaration setting up the disclaimer filed in the patent office on the 5th of March, 1894, and also alleging that the cars made and used by the plaintiff were marked with the word "patented," with the name and date of the patent.

It is further stipulated and agreed that the answer of the defendant now on file to the original declaration may stand as and for the answer to the amendment hereinabove referred to.

JNO. H. MILLER,
JNO. L. BOONE,
Attorneys for Plaintiff.

WHEATON, KALLOCH & KIERCE,
Attorneys for Defendant.

No. 3.

Amendment to Declaration.

[Title of Court and Cause.]

Now comes the plaintiff, and by leave of Court first had and obtained makes this amendment to his declaration now on file, namely:

After line 7 on page 4 of said declaration, insert the following allegation, to wit: "That through inadvertence, accident, and mistake, and without any fraudulent or deceptive intention, the specification and claim of said reissued letters patent were made, and are too broad, including more than that of which the plaintiff was the original and first inventor and discoverer in this: That the specification and the first and second of said claims of said reissued letters patent do or might make the said claims apply to any car, whereas they ought not to apply to or include any except a combined ventilator and refrigerator car, having in its roof at its opposite ends separate and independent ice-holes and lids for closing the same.

That as soon as plaintiff discovered the aforesaid fact, and within a reasonable time, to wit, on the 5th day of March, A. D. 1894, this plaintiff, being then sole owner and holder of said reissued letters patent, did make and file in the patent office of the United States a disclaimer in writing, attested by two witnesses, and did cause the same to be recorded in the said patent office.

That in and by said disclaimer the paragraph comprising lines 82 to 90, inclusive, in page 1 of the specification, was and is amended to read as follows:

My present invention comprises a combined ventilator and refrigerator car having in its roof at its opposite ends separate and independent ice-holes, a

lid or cover for each of such ice-holes adapted to close the latter, and means for holding the lids open in oppositely inclined positions, whereby said lids are adapted not only to form closures for ice-holes, but also to act to deflect and direct air down into each of said ice-holes as and for the purpose herein specified.

Also lines 14 to 17, inclusive, and the last three words of line 13, page 3, of the specification were canceled, to wit, the words—and the refrigerator car may be transformed into a ventilator car by either air-deflecting contrivances covering the ice-holes independently of the ordinary outside ice-hole doors.

Also claim 1 was amended so as to read as follows:

1. The combined ventilator and refrigerator car set forth, comprising a refrigerator car having in its roof at its opposite ends separate and independent ice-holes in the lid of or cover for each of such ice-holes adapted to close the latter, and means for holding the lids open in oppositely inclined positions whereby said lids are adapted not only to form closures for the ice-holes, but also to act to deflect and direct the air down into said ice-holes as and for the purpose specified.

Also claim 2 was disclaimed, in so far as it was not wholly covered by said claim 1, as amended by said disclaimer, and was therefore canceled for lack of patentable novelty over said claim 1.

That said disclaimer was recorded in the patent office of the United States on the 5th day of March, 1894, and was attached to and made a part of, and the same is now a part of, the said reissued patent No. 11324.

Plaintiff further avers that since the issuance of said reissued letters patent he has made and used

a large number of cars containing and embracing the invention patented, and upon each and every one of said cars so made and used he has stamped and printed, or caused to be stamped and printed, the word 'patented,' together with the number of the said reissued letters patent, to wit, 11,324, together with the date thereof, towit, April 18th, 1893, and the name of the patentee, towit, Edwin T. Earl, the plaintiff herein."

Wherefore, plaintiff renews the prayer of his declaration on file herein.

JNO. L. BOONE, and
JNO. H. MILLER,
Attorneys for Plaintiff.

No. 4.

Answer.

[Title of Court and Cause.]

Now comes the defendant and denies generally and specifically each and every allegation contained in the plaintiff's declaration on file herein, and says that he is not guilty of the grievances therein charged against him, or any or either, or any part thereof, and of this the defendant puts himself upon the country.

Wherefore defendant demands judgment for his costs.

_____,
Attorneys for Defendants.

No. 5.

Declaration on Two Patents, One Reissued. (a)

[Title of Court and Cause.]

The said plaintiff, John F. Myers, a citizen of the United States, and of the State of California and a resident and inhabitant of the Northern District of said State, files this, his complaint, against the defendants, Herbert D. Gaskill and James I. Regan, partners, doing business under the firm name of Gaskill & Regan, both of whom are citizens and residents of the State of California, and of the Northern District thereof, and for cause of action alleges:

That at all the times hereinafter named the said Herbert D. Gaskill and James I. Regan were, and are now, partners doing business under the firm name of Gaskill & Regan.

That heretofore, and prior to the 11th day of April, A. D. 1891, plaintiff was the original and first inventor of a certain new and useful invention, to wit, a "Stove for Heating and Lighting Purposes," more particularly set out and described in the letters patent hereinafter mentioned.

That the said invention was a new and useful invention, and was not known or used by others in this country, nor patented nor described in any printed publication in this or any foreign country, prior to the invention and discovery thereof by the plaintiff; and at the time of plaintiff's application for a patent therefor, hereinafter alleged, the same had not been in public use nor on sale in the United States for two years nor abandoned nor proved to have been abandoned.

That the said John F. Myers, being as aforesaid, the original and first inventor thereof, did, on said 11th day of April, A. D. 1891, file his application in

the United States patent office for a patent therefor, and thereafter, to wit, on the 10th day of November, A. D. 1891, after proceedings duly and regularly had and taken in the patent office of the United States, letters patent of the United States for the said invention were granted, issued and delivered to plaintiff, granting and securing unto him, John F. Myers, his heirs and assigns, for the full term of seventeen years from the said last-named day, the full and exclusive right, liberty and privilege to make, use and vend the said invention throughout the United States of America, and the territories thereof.

That the said letters patent were issued in due form of law, under the seal of the patent office of the United States, and were signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, and were numbered 462,954, and bear date the 10th day of November, A. D. 1891, and were on said last-named day delivered to said plaintiff, John F. Myers, which said letters patent, or a duly authenticated copy thereof, are ready in court to be produced.

That prior to the issuance of said letters patent all proceedings were had and taken which were required by law to be had or taken prior to the issuance of letters patent for new and useful inventions.

That said letters patent were inoperative and invalid by reason of a defective and insufficient specification; that said error and defect arose through inadvertence, accident and mistake, and without any fraudulent or deceptive intention on the part of said plaintiff; that by reason thereof, and within a reasonable time after the discovery thereof, to wit, on the 2nd day of March, A. D. 1893, said plaintiff duly surrendered said last-mentioned letters patent to the

Commissioner of Patents of the United States, and upon the payment of the duty required by law, thereafter, to wit, on the 7th day of November, A. D. 1893, the said Commissioner of Patents did cause a new patent for the same invention, and in accordance with the corrected specifications, to be issued to said plaintiff, his heirs and assigns, for the unexpired part of the term of the original patent.

That the letters patent so reissued were issued in due form of law, under the seal of the patent office of the United States, and were signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States and were numbered with the reissue number 11,383, and bear date the 7th day of November, A. D. 1893, and on said last-named day were delivered to said plaintiff, John F. Myers, whereby there was granted and secured to plaintiff, his heirs and assigns, for the residue of the then unexpired term of seventeen years from the 10th day of November, 1891, the full and exclusive right, liberty and privilege to make, use and vend the said invention throughout the United States of America and the territories thereof.

That the insufficiency of said original specification consisted in the omission therefrom of claims 1, 2, 3, 4, 5, and 6, now contained in said reissued patent, the subject matter of which claims, and each of them, was the invention of plaintiff, and ought to have been embodied in said original patent, but was omitted by plaintiff's attorney, who presented and prosecuted plaintiff's original application, without plaintiff's knowledge or consent. The plaintiff fully believed that his original patent covered the combinations contained in said claims 1, 2, 3, 4, 5, and 6, of said reissued patent, until within sixty days prior to the surrender of his said original letters pat-

ent and the filing of his said application for a reissue. That said omission and failure to claim said several last-mentioned combinations was the result of mistake and inadvertence and was without any fraudulent or deceptive intention on his part.

That the said reissued patent was and is for the same invention as that contained and embodied in the said original letters patent, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of reissued letters patent, which said reissued letters patent No. 11,383 are hereby specially referred to for a further and more complete description, which said letters patent, or a duly authenticated copy thereof, are ready in Court to be produced.

And said plaintiff further alleges that always, and at all times since the issuance of said reissued letters patent No. 11,383, he has been in the exercise of the rights, liberties and privileges so granted by said letters patent aforesaid, that plaintiff has made, used and sold the invention as patented, and has had and maintained in the State of California, and Northern District thereof, until the infringements hereinafter complained of, exclusive possession of the said invention, under and by virtue of said reissued letters patent, and has never acquiesced in any invasion or infringement of his rights.

Plaintiff further alleges that he is still, and now is, the owner and holder of said reissued letters patent, and of all the rights, liberties and privileges by them granted and conferred, in the State of California, and in the Northern District thereof.

Plaintiff further says that he has extensively manufactured and sold said patented lamp stove, and has always marked each and every one of such

stoves so made and sold by him with the word "patented," together with the date of his said patent.

Plaintiff further alleges that heretofore, to wit, before the 15th day of December, A. D. 1892, by his own industry, genius, efforts and expense he invented, devised and produced a certain new and useful "Design for a Lamp Stove," which design is more particularly set out and described in the letters patent hereinafter mentioned; that the said design was new and useful, and was not known or used by others before the invention or production thereof by the plaintiff, nor patented nor described in any printed publication prior to the invention and production thereof by the plaintiff, and at the time of plaintiff's application for a patent therefor, as hereinafter alleged, the same had not been in public use nor on sale for two years, nor abandoned nor proved to be abandoned.

The plaintiff, being as aforesaid the inventor and producer thereof, did, on the 15th day of December, A. D. 1892, file his application in the United States patent office for a patent therefor, and thereafter, to wit, on the 14th day of November, 1893, after proceedings duly and regularly had and taken in the patent office of the United States, letters patent of the United States for the said invention were granted, issued and delivered to plaintiff, granting and securing unto him, John F. Myers, plaintiff herein, his heirs and assigns, for the full term of seven years from the 14th day of November, 1893, the full and exclusive right, liberty and privilege to make, use and vend the said design for lamp stoves throughout the United States of America and the territories thereof.

That the said letters patent were issued in due form of law, under the seal of the patent office of the

United States and were signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, which said letters patent were numbered 22,911, and bear date the 14th day of November, 1893, and were on said last-named day delivered to John F. Myers, plaintiff herein, which letters patent, or a duly authenticated copy thereof are ready in Court to be produced.

That prior to the issuance of said letters patent all proceedings were had and taken which were required by law to be had or taken prior to the issuance of letters patent for new and useful inventions.

And said plaintiff further alleges that always, and at all times since the issuance of said letters patent No. 22,911, he has been in the exercise of the rights, liberties and privileges so granted by said letters patent aforesaid; that plaintiff has made, used and sold the invention so patented, and has had and maintained in the State of California, and Northern District thereof, until the infringements hereinafter complained of, exclusive possession of the invention under and by virtue of said letters patent, and has never acquiesced in any invasion or infringements of his rights.

Plaintiff further alleges that he is still, and now is, the owner and holder of the said letters patent, and of all the rights, liberties and privileges by them granted and conferred, in the State of California, and in the Northern District thereof.

That he has extensively manufactured and sold lamp stoves containing said patented design, and has always marked each and every stove so maufactured and sold by him with the word "patented," together with the date of said patent.

Yet, notwithstanding the premises, the defendants herein as such copartners, having full knowl-

edge thereof, and in violation of the exclusive right and privilege secured to plaintiff by said letters patent and grants thereunder, and utterly disregarding the same, and contriving and intending to injure and damage plaintiff and his said rights since the date of said letters patent, and prior to the commencement of this action, without the license or consent of plaintiff, or any license or authority whatever, have jointly made, used and sold in the State of California and Northern District thereof, to others, many lamp stoves containing and embodying the inventions and design patented in and by the said before mentioned letters patent, and threaten to continue to make, use and sell lamp stoves containing and embodying said inventions and design in large quantities, and to supply the market therewith, and to sell the same within the State of California, and in the Northern District thereof.

That the lamp stoves so made, used and sold by the defendants were and are, and each of them was and is, an infringement of the said reissued letters patent No. 11,383, containing and embodying the invention claimed, discovered and patented in and by said reissued letters patent last mentioned and the design patent No. 22,911.

And plaintiff further alleges that the said defendants have embodied said two mentioned inventions, to wit, the invention shown and described in said reissued letters patent No. 11,383, and the design patent shown, described and claimed in said design patent No. 22,911 in a single lamp stove, so that the two said inventions are used conjointly in one structure, in infringement of both of said herein mentioned letters patent.

That by reason of such fact it is impracticable to segregate the damages sustained by plaintiff un-

der either of said patents from the damages under both of them.

And plaintiff further alleges that the said defendants have on hand, a large number of said lamp stoves and are now offering them for sale, and intend to sell the same.

Whereby, and by reason of the premises and the infringement aforesaid, the plaintiff has been greatly injured and damaged and deprived of large royalties, gains and advantages which he otherwise would have derived, and has sustained actual damages thereby in a large sum, to wit, five thousand ($5,000.00) dollars.

Wherefore, and by force of the statutes of the United States, a right of action has accrued to plaintiff to recover the said actual damages, and such additional sum, not exceeding in the aggregate three times the amount of said actual damages as the court may see fit to adjudge and order, besides costs of suit.

Yet the defendants, though often requested, have never paid the same, nor any part thereof, but have refused, and still refuse so to do, and therefore plaintiff brings this suit.

JOHN L. BOONE,
Attorney for Plaintiff.

(a) Reported 48 U. S. App. 494.

No. 6.

Answer. (a)

[Title of Court and Cause.]

The above-named defendants, answering the complaint of the plaintiff above-named.

Aver that they have never been informed except by the said complaint, whether the plaintiff, John F. Myers, is a citizen of the United States and of the State of California, and a resident and inhabitant of the Northern District of California, and have no information or belief upon the subject sufficient to enable them to answer that allegation of the complaint, and on that ground they deny the same.

Further answering the said complaint, defendants deny that theretofore and prior to the 11th day of April, A. D. 1891, plaintiff was the original or first or sole inventor or discoverer of the so-called certain new and useful invention, that is to say, the stove for heating and lighting purposes set out and described in letters patent granted by the United States of America on, the 10th day of November, A. D. 1891, and numbered 462,954; and deny that the so-called invention was not known or used in this country, nor patented nor described in any printed publication in this or any foreign country prior to the alleged invention and discovery thereof by the plaintiff; and deny that at the time of plaintiff's application for a patent therefor the same had not been in public use or on sale in this country for more than two years before his said application for a patent, or had not been abandoned to the public.

Further answering, they deny that the alleged inoperativeness and invalidity of the said letters patent arose by inadvertence, accident or mistake or without any fraudulent or deceptive intention on the part of said plaintiff; and deny that the alleged insufficiency of the original specifications, that is to say, the omission therefrom of claims 1, 2, 3, 4, 5 and 6 now contained in said reissued patent, occurred without plaintiff's knowledge or consent; and deny

that the subject matter of the said last mentioned claims of said reissued patent or any of them was an invention or the invention of plaintiff and deny that the said reissued letters patent are for the same invention as that contained in the said original letters patent, upon the surrender of which they were issued.

Further answering, they deny that plaintiff is the owner and holder of said reissued letters patent or of all the rights, liberties or privileges by them granted in the State of California and in the Northern District thereof; and deny that said plaintiff has exclusively manufactured or sold said lamp stove covered by said alleged letters patent; and deny that said plaintiff has always marked each and every such stove so made and sold by him with the word "patented," together with the date of his said patent; and deny that plaintiff has had and maintained in the State of California and Northern District thereof, until the said alleged infringement by these defendants, exclusive possession of the said invention, or has never acquiesced in any invasion or infringement of his pretended rights.

Further answering, defendants aver and allege that the pretended improvement in stoves for heating and lighting purposes mentioned in said letters patent No. 462,954, and reissued letters patent number 11,383, was not new when produced by said plaintiff, but was known and previously patented and described in printed publications prior to the alleged invention thereof by the said John F. Myers, that is to say:

The said improvements were patented previously in and by the following letters patent of the United States:

No. 45,957, W. B. Billings, 17 January, 1865.

No. 46,045, Joshua E. Ambrose, 24 Januarv. 1865, etc., etc.

(Reissue.)

No. 475,029, Augustine C. Barler, 17 May, 1892.

No. 498,380, Frank E. Browne, 30 May, 1893.

(Filed July 5, 1892.)

Letters patent of the United Kingdom of Great Britain and Ireland, issued to:

One Clark, numbered 4,042.

One Thomas W. Ballard, numbered 4,299, 29 December, 1891.

And further answering, these defendants aver that they are informed and believe that one E. T. Johnson had previous knowledge of substantially the same improvements patented by the said John F. Myers, prior to the alleged invention thereof by the said John F. Myers, and himself used substantially the thing patented at the city and county of San Francisco and elsewhere during the year 1891 and prior thereto.

And aver on information and belief that an apparatus substantially identical with the stove alleged to have been invented by the said plaintiff was known and used by Charles Brown & Son previous to the application for reissued letters patent numbered 11,383 by the said John F. Myers, that is to say, on or about the month of November, A. D. 1892, and prior thereto, at the city and county of San Francisco, State of California, and that the plaintiff herein, as defendants are informed and verily believe, saw the said device so made and used at the store of the said Charles Brown & Son, at San Francisco, during the month of October or November, A. D. 1892.

And said improvements were known and used by others in this coutry and were described in certain other printed publications in this and other countries prior to the alleged invention thereof by the said John F. Myers; the names and residences of said certain other persons having such prior knowledge and making such prior use are at present unknown to these defendants, and they therefore pray your Honors that so soon as they may reasonably obtain information sufficient to set forth these matters in detail they may be permitted to do so by amended answer or otherwise, as to your Honors shall seem meet.

Further answering, they deny that the said plaintiff, by his own industry, genius, efforts and expense invented, devised or produced, before the 15th day of December, A. D. 1892, or at all, a certain new and useful design for a lamp stove mentioned and described in lettters patent of the United States, number 22,911, and dated the 14th day of November, 1893; and deny that the said design was new or useful or not known or used by others before the alleged invention or production thereof by said John F. Myers, or patented or described in any printed publication prior to the alleged invention or production thereof by the said John F. Myers; and deny that at the time of plaintiff's application for letters patent therefor, the same had not been in public use nor on sale for two years nor not abandoned to the public; and deny that at all times since the issuance of said letters patent, number 22,911, the said plaintiff has had and maintained in the State of California and Northern District thereof, until the alleged infringement by these defendants, the exclusive possession of the alleged invention covered by said design letters patent, or has never acqui-

esced in any invasion or infringement of his pretended rights thereunder; and deny that plaintiff is the owner and holder of the said design letters patent, and of all the rights, liberties and privileges by them granted and conferred in the State of California and in the Northern District thereof; and deny that he has always marked each and every stove manufactured and sold by him under cover of the said design letters patent with the word "patented," together with the date of said design letters patent.

Further answering, these defendants deny that they have jointly or at all made, used or sold in the State of California, and Northern District thereof, any lamp stoves containing and embodying the alleged inventions and design patented in and by the said letters patent, reissued letters patent, or design patent; and deny that they have infringed or intended or intend to infringe the said letters patent, number 462,954, or said letters patent reissue number 11,383, or said design letters patent number 22,911.

And they deny that any lamp stoves made, used or sold by them are or were or any of them are or were an infringement of the letters patent reissue number 11,383, or design letters patent, number 22,911; and deny that these defendants have embodied the alleged inventions mentioned in said two last named grants of letters patent in a single lamp stove, or at all, or that they have infringed both the said last-mentioned letters patent.

Further answering, these defendants aver the fact to be that said original letters patent, numbered 462,954, were surrendered and false and fraudulent representations made with intent to interpolate, claim and maintain in and by said letters patent reissue number 11,383, and the same do so contain in-

terpolations, claims and grants of and for more and other matters than were embraced in the alleged invention of the said John F. Myers, for which said original letters patent, numbered 462,954, were granted and issued; and they further aver that the said reissued letters patent, number 11,383, are for another and different invention and discovery than that for which the said original letters patent were granted, or which was intended to be described and claimed therein and thereby, and are based upon other and new matter introduced into the specifications of the said reissued letters patent, number 11,383.

Wherefore, these defendants pray to be hence dismissed, with their reasonable costs in this behalf incurred.

G. R. LUKENS,
Attorney for Defendants.

(a) Reported 48 U. S. App. 494.

Section II.

NATIONAL BANKS.

No. 7.

Complaint (a).

The plaintiff, having first obtained leave of the Court for that purpose, files this, its complaint, in the above-entitled action, and for a cause of action against the defendants alleges:

1. That plaintiff is now, and for more than five years last past has been, a banking corporation organized and existing under and by virtue of the banking laws of the United States, and having its

place of business and residence in the city of New York, and State of New York, and being a citizen of said State.

2. That the defendant, the First National Bank of Spokane Falls, is now, and for more than five years last past has been, a banking corporation, organized and existing under and by virtue of the banking laws of the United States, and having its place of business and residence in the city of Spokane, county of Spokane, State of Washington, and being a citizen of said State; and defendant F. Lewis Clark, receiver of said First National Bank of Spokane Falls, is a resident and citizen of the last-named county and State.

3. That the amount involved in this action, exclusive of interest and costs, exceeds the sum of two thousand dollars.

4. That on or about the 9th day of November, 1892, the defendant bank, by and through its cashier and board of directors, borrowed of the plaintiff, and plaintiff, through its duly authorized officers, loaned to said defendant bank the sum of fifty thousand ($50,000.00) dollars, which sum was then and there, by and with the authority and consent of the cashier and board of directors of defendant bank, placed to the credit of defendant bank on the books of plaintiff, and was afterward, but prior to the 26th day of July, 1893, drawn upon by defendant bank, and fully paid out by plaintiff upon defendant bank's checks and drafts, in the due and ordinary course of business between the two banks, the plaintiff, during all the times and periods aforesaid, being the defendant bank's correspondent in the city of New York.

5. That at the time said loan was made as aforesaid it was agreed by and between plaintiff and the

defendant bank, through their respective officers as aforesaid, that said loan should bear interest at the rate of one and one-half per cent per annum until said rate should be changed by mutual agreement; that afterwards, on the 7th day of March, 1893, it was mutually agreed between said banks, through their said officers, that the rate of interest upon said loan should be changed from one and one-half per cent per annum to six per cent per annum.

6. That, on the 26th day of July, 1893, the defendant bank became and was insolvent, closed its doors, and shortly thereafter went into the hands of a receiver for liquidation, defendant F. Lewis Clark being appointed by the comptroller of the currency as such receiver; that said Clark is still such receiver.

7. That for a long time prior to the making of said loan of fifty thousand ($50,000.00) dollars, as aforesaid, plaintiff bank was and continued to be, up to the date when defendant bank closed its doors as aforesaid, the regular correspondent of the latter bank in the city of New York, and during all of said period there was a large and varied running account between the two banks, upon which the defendant bank received the credit of said fifty thousand ($50,000.00) dollars, as aforesaid; that at the time defendant bank closed its doors as aforesaid there appeared to be a balance of fifteen thousand, five hundred and twenty-seven and 80-100 ($15,527.80) dollars, on the said account in favor of the defendant bank, which amount the plaintiff bank then and there credited upon said loan of fifty thousand ($50,000.00) dollars; that but for said credit of fifty thousand ($50,000.00) dollars so entered upon said account as aforesaid, in favor of defendant bank on account of said loan, there would have been an

overdraft of thirty-four thousand four hundred and seventy-two and 20-100 ($34,472.20) dollars against defendant bank at the time it closed its doors, instead of an apparent balance in its favor.

8. That heretofore, before the beginning of this action, the plaintiff prepared and made proof to said Clark, as such receiver, of its said claim against the defendant bank for the unpaid balance of said indebtedness, viz., for the sum of thirty-four thousand four hundred and seventy-two and 20-100 ($34,472.20) dollars and interest, and thereupon demanded that said receiver allow plaintiff's said claim, and place the same on the list of valid claims against defendant bank, to the end that plaintiff might participate in the dividends declared and paid, and to be declared and paid, by the comptroller of the currency to the various creditors of defendant bank; that said receiver then and there failed and refused, and still fails and absolutely refuses, to comply with plaintiff's said demand or request, and maintains that he is not required to allow plaintiff's said claim or any part thereof.

Wherefore, plaintiff demands judgment against defendant, the First National Bank of Spokane Falls, for the sum of $34,472.20, with interest thereon from the 5th day of August, 1893, at the rate of eight per cent per annum, and interest on the sum of $50,000.00 at the rate of six per cent per annum from the 1st day of May, 1893, to the 5th day of August, 1893, together with the costs and disbursements of this action.

And plaintiff further prays that said receiver be ordered to recognize plaintiff's said claim as a valid and subsisting debt against the defendant bank; and that he place it on the next tableaux of distribution for its share of the amount already divided among

creditors of defendant bank, and in all future dividends to be distributed; and plaintiff prays for all other and further relief to which it may be entitled in the premises.

BLAKE & POST,
Attorneys for Plaintiff.

(a) Reported 48 U. S. App. 633.

No. 8.

Answer. (a)

[Title of Court and Cause.]

Come now the defendants above-named, and for answer to the amended complaint of plaintiff, filed herein:

1. Admit each and every allegation, matter, and thing contained in paragraphs 1, 2 and 3 of said complaint.

2. Deny each and every allegation, matter, and thing contained in paragraph 4 of said complaint.

3. Deny each and every allegation, matter, and thing contained in paragraph 5 of said complaint.

4. Admit each and every allegation, matter and thing contained in paragraph 6 of said complaint.

5. Deny each and every allegation, matter, and thing contained in paragraph 7 of said complaint.

6. Admit each and every allegation, matter and thing contained in paragraph 8 of said complaint.

And said defendants for a further and separate defense and counterclaim to the alleged cause of action in said amended complaint contained, aver:

1. That at all the times and dates hereinafter mentioned, the First National Bank of Spokane,

Washington, was a corporation, duly organized and incorporated under the national banking laws of the United States of America, located and doing business at the city of Spokane, State of Washington.

2. That all the times and dates hereinafter mentioned the said plaintiff, the American Exchange National Bank of New York, was a corporation, duly organized and incorporated under the national banking laws of the United States of America, located and doing business at the city of New York, State of New York.

3. That the said First National Bank suspended business on the 26th day of July, 1893.

4. That on the 20th day of November, 1893, said defendant F. Lewis Clark was duly appointed receiver of and for said defendant First National Bank, by the comptroller of the currency of the United States.

5. That on the 25th day of November, 1893, said defendant F. Lewis Clark qualified as such receiver, and ever since said date has been, and now is, the duly appointed, qualified, and acting receiver of and for said defendant First National Bank.

6. That on the date of the suspension of said defendant First National Bank, towit, the 26th day of July, 1893, the said plaintiff herein, the American Exchange National Bank of New York, had in its hands, belonging to said defendant First National Bank, funds, moneys, and credits, amounting to the sum of sixteen thousand, three hundred and eighty-three and 49-100 ($16,383.49) dollars.

7. That before the commencement of this action the said defendant F. Lewis Clark as receiver of said defendant First National Bank, demanded of the said plaintiff, the American Exchange National Bank of New York, that it pay to him, as such re-

ceiver, the said sum of sixteen thousand, three hundred and eighty-three and 49-100 ($16,383.49) dollars with interest thereon at eight per cent per annum from the 26th day of July, 1893.

8. That said plaintiff, the American Exchange National Bank of New York, has not paid said sum of sixteen thousand, three hundred and eighty-three and 49-100 ($16,383.49) dollars, or any part thereof, to said defendant F. Lewis Clark, as such receiver, or to the said defendant First National Bank, and still refuses to pay the same to defendants, or either of them.

Wherefore, defendants pray judgment against said plaintiff, the American Exchange National Bank of New York, for the sum of sixteen thousand, three hundred and eighty-three and 49-100 ($16,383.49) dollars, with interest thereon at eight per cent per annum from the 26th day of July, 1893, and for their costs and disbursements herein expended.

JONES, VOORHEES & STEPHENS,
Attorneys for Defendants.

(a) Case reported 48 U. S. App. 633.

No. 9.

Stipulation for Amendment of Answer.

[Title of Court and Cause.]

It is hereby stipulated and agreed by and between Blake & Post, attorneys for plaintiff herein, and Jones, Voorhees & Stephens, attorneys for defendants herein, that the said defendants may amend their answer to the amended complaint, heretofore filed herein, by interlineation, by inserting in said answer the words and figures "sixteen thousand three

hundred and eighty-three and 49-100 ($16,383.49) dollars," in lieu of the words and figures "Fifteen thousand six hundred and forty-eight and 8-100 ($15,648.08) dollars," wherever said last-mentioned words and figures occur in said answer; that the verification of the said answer made before amendment shall be treated and considered as the verification of said answer as amended; that the reply of the plaintiff to said answer, filed before said amendment, shall be treated and considered as the reply to said answer as amended, and that the verification of said reply, as originally filed, shall be treated and considered as the verification of the reply to said answer as amended.

BLAKE & POST,
Attorneys for Plaintiff.

JONES, VOORHEES & STHEPENS,
Attorneys for Defendants.

No. 10.

Reply. (a)

[Title of Court and Cause.]

For reply to the affirmative answer and the counterclaim of the defendants pleaded herein, the plaintiff alleges:

1. That it is true, as alleged in the complaint, the plaintiff bank, on the 5th day of August, 1893, had funds, moneys, and credits in its hands belonging to the defendant bank, amounting, in the aggregate, to fifteen thousand, five hundred and twenty-seven and 80-100 ($15,527.80) dollars, which amount plaintiff then and there applied as a credit upon said loan of

fifty thousand ($50,000.00) dollars, made by the plaintiff bank to the defendant bank, as therein alleged.

2. That said sum of fifteen thousand, five hundred and twenty-seven and 80-100 ($15,527.80) dollars, so credited upon said loan as aforesaid, constituted the identical moneys, credits, and funds sued for in said counterclaim; that said counterclaim consists of the same debts, credits, moneys, and funds for which the plaintiff bank has given the defendant bank credit in the complaint in the sum of $15,527.80.

3. Plaintiff denies that, at the time the defendant bank closed its doors, or at any time since, it has had moneys, credits, or funds of any nature or description whatever in its hands belonging to the defendant bank to the amount of $15,648.08, or any other sum greater than $15,527.80, which latter sum was credited as aforesaid upon said $50,000.00 loan.

Wherefore plaintiff asks judgment as in the complaint prayed.

BLAKE & POST,
Attorneys for Plaintiff.

(a) Case reported 48 U. S. App. 633.

No. 11.

Judgment. (a)

[Title of Court and Cause.]

Come now the parties to the above-entitled cause by counsel, the plaintiff herein by Blake & Post, its attorneys, and the defendants by Jones, Voorhees & Stephens, their attorneys; and, upon plaintiff's motion, it is ordered that judgment be entered upon the verdict heretofore, to wit, on April 30, 1896, rendered in favor of plaintiff and against the defend-

ants, for the sum of forty thousand, nine hundred and thirty-nine and 6-100 ($40,939.06) dollars.

It is, therefore, considered and adjudged that the plaintiff, the American Exchange National Bank of New York City, do have and recover of and from the defendant, the First National Bank of Spokane Falls, F. Lewis Clark, receiver of said defendant bank, the sum of forty thousand, nine hundred and thirty-nine and 6-100 ($40,939.06) dollars, together with its costs and disbursements herein laid out and expended, taxed at seventy-two dollars and sixty-nine cents; and it is further considered and adjudged that said F. Lewis Clark, as such receiver, do recognize the said American Exchange National Bank of New York City as a creditor of said First National Bank, to the full amount of thirty-four thousand seven hundred and thirteen and 71-100 ($34,713.71) dollars, the amount found by the jury to be due and owing by the defendant bank to plaintiff bank at the time the former closed its doors; and that he do pay the same, or certify the same, to the comptroller of the currency as an adjudicated claim to be paid in due course of administration; and that if there shall be a surplus of assets of the defendant bank remaining after payment in full of the principal of all debts of the defendant bank, interest on said sum at the rate of six per cent per annum from May 4, 1893, shall be paid in due course of administration; and that said receiver do at once pay, or certify to the comptroller to be paid the costs hereof, taxed as aforesaid.

Dated May 8, 1896.

C. H. HANFORD,
Judge.

(a) Case reported 48 U. S. App. 633.

Section III.

CUSTOMS.

No. 12.

Petition for Review by Importer. (a)

(Under Act of June 10, 1890.)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

In the Matter of the Application of the SOUTHERN PACIFIC COMPANY, for Review under an Act of Congress, approved June 10, 1890, entitled "An Act to simplify the laws in relation to the collection of the revenues" of the questions of law and fact involved in a decision of the Board of General Appraisers, on duty at the Port of New York, in the matter of the classification of certain "Creosote" merchandise imported by said Southern Pacific Company.

To the Honorable, the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

The petition and application of the Southern Pacific Company respectfully shows:

That your petitioner is, and at the several times hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of Kentucky.

That on or about the nineteenth day of March, A. D. 1895, the said Southern Pacific Company imported into the United States, to wit, at the Port of San Francisco, in said State of California, from Lon-

don, a port or place in the Kingdom of Great Britain, certain merchandise invoiced as "2,200 casks liquid creosote." Said merchandise is more fully described as the merchandise subject to consumption entry number 3652, dated March 19, 1895, of the official serial numbers of said customhouse, at said Port of San Francisco, and subject to decision number 27026 B-3893 of the official serial numbers of the Board of United States General Appraisers on duty at New York, State of New York.

That on the fifth day of April, A. D. 1895, upon the entry of said merchandise, the collector of said Port of San Francisco classified the said merchandise for duty as "Distilled Oil," dutiable at the rate of 25 per cent ad valorem, under the act of Congress of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue of the Government and for other purposes."

That thereafter, to wit, on the fifth day of April, A. D. 1895, said entry was liquidated by said collector, upon the classification and at the rate of duty hereinbefore set forth; and said duty upon said merchandise, amounting to the sum of $1,472, was ascertained, levied, and collected by said collector, and the full amount thereof, together with all charges ascertained to be due upon said merchandise, was paid by said Southern Pacific Company on the thirteenth day of April, A. D. 1895.

That within ten days after such ascertainment, liquidation and payment of said duties, towit, on the thirteenth day of April, A. D. 1895, the said Southern Pacific Company, being dissatisfied with said classification, ascertainment, and liquidation, and the decision of the said collector in the premises, gave notice to the said collector in writing of such dissatisfaction, which written notice distinctly and

specifically set forth the reasons for the objections of said importers thereto, as follows:

"That the article in question is not a distilled oil, but is, at ordinary temperature, a solid, waxy crystal, the chief constitutents of which are naphthalene, tar acids, and pitch, and as such should be admitted free of duty under paragraph 443 of act of August 28, 1894, as product of coal tar not specially provided for."

That thereafter, in due and proper time, said collector transmitted all the papers and exhibits on which said entry was made, or connected therewith, to the Board of the United States General Appraisers, then on duty at the Port of New York, State of New York, United States of America; and thereafter, on the twenty-seventh day of July, 1896, said Board of United States General Appraisers, towit, H. M. Somerville, Charles H. Ham, and George C. Tichenor, made and rendered their decision in said matter in favor of the said classification, ascertainment, and decision made and rendered and duty levied and exacted as aforesaid, and against said protest.

And your petitioner avers that it is dissatisfied with the said assessment of said collector, and is dissatisfied with said decision of said Board of General Appraisers as to the construction of the law respecting the classification of the said creosote and the duty imposed thereon.

Wherefore, your petitioner now applies to this Honorable Court for a review of the questions of law and fact involved in said decision of said Board of General Appraisers.

And in respect to said entry and the said payment, your petitioner specifies as the reasons for its objections thereto, as follows, to wit:

That the said collector erred in making said assessment, and said Board of General Appraisers erred in sustaining said assessment to the amount set forth in this petition with respect to said entry, and erred in finding as a fact that the merchandise in question was and is a distilled oil, and erred in finding that oils were and are its chief constitutents, and erred in not finding that tar, acids, naphthalene, and pitch were and are the chief constitutents of said merchandise, and erred in not finding that said merchandise was and is not an oil, and erred in concluding, holding, and deciding that the duty upon said merchandise was and is 25 per cent ad valorem, and in not concluding, holding, and deciding that there was and is no duty upon said merchandise, but that the same was and is free of duty.

And your petitioner further prays this Honorable Court for an order that the said Board of General Appraisers do return to this Court the record and evidence taken by them, together with a certified statement of the facts involved in said case, and their decision thereon, and that upon said record and evidence, and such further evidence as may be taken herein, the Court proceed to hear and determine the questions of law and fact involved in said decision, respecting the classification of said merchandise and the rate of duty imposed thereon under said classification, and that upon such determination, said decision of said Board of General Appraisers be reviewed, reversed, and set aside; that your petitioner may recover said sum of money as assessed against it, as hereinbefore stated, and its costs, and that this Honorable Court afford such other and further relief

to petitioner as may be right and just in the premises.

[Corporate Seal] SOUTHERN PACIFIC COMPANY.
By CHAS. F. CROCKER,
Vice-President.

(a) Reported 82 Fed. Rep. 311. See Warren Chemical Co. v. U. S., 78 Fed. Rep. 810.

No. 13.

Order of Court for Return of Board (a).
(See Form No. 12.)

[Title of Court and Cause.]

Whereas, the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky, as importer, has applied to this Court for a review of the questions of law and fact involved in a decision of the Board of the United States General Appraisers on duty at the Port of New York, in the State of New York, which said decision was made and rendered on the twenty-seventh day of July, 1896, in the matter of the protest 27026 B|3893, classifying said merchandise for duty as "distilled oil," dutiable at the rate of 25 per cent ad valorem, under paragraph 60 of the Act of Congress entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," adopted August 27, 1894, which said merchandise was imported into the United States at the said Port of

San Francisco, California, and entered at the customhouse thereof March 19, 1895, which said merchandise is more fully described as being the merchandise subject to consumption entry No. 3652, made at said customhouse at said port; and

Whereas, said Southern Pacific Company has duly filed its application and petition for a review of said decision, praying, among other things, that the said Board of United States General Appraisers be ordered to return to this Court the records and evidence taken by them in said case, together with a certified statement of the facts involved in such case, and their decision thereon:

Now, therefore, upon consideration of the premises, upon motion of Fred'k B. Lake, attorney for said applicant and petitioner, it is hereby ordered that the three United States General Appraisers on duty at the Port of New York, State of New York, do, with all convenient speed, return to this Court the record of said matter and the evidence taken by them therein, together with a certified statement of the facts involved in said case, and their decision therein.

And it is further ordered that this order be entered upon the minutes of this Court, and served by the United States Marshal for the Southern District of New York on each member of said board of three general appraisers, by delivering to each of them a certified copy thereof.

JOSEPH McKENNA,
Judge.

(a) Case reported 82 Fed. Rep. 311. See In re Blumlein, 45 Fed. Rep. 236.

No. 14.

Clerk's Certificate to Copy Order for Service.

[Title of Court and Cause.]

United States of America.
Northern District of California, } ss.
City and County of San Francisco.

I, W. J. Costigan, Clerk of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order of Court, signed, filed and entered herein on the eighth day of September, 1896, in the above and therein entitled matter, as the same remains of record and on file in the office of the clerk of said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this eighth day of September, A. D. 1896.

[Seal] W. J. COSTIGAN,
Clerk U. S. Circuit Court, Northern Division of California.

[Endorsed]: I hereby certify that on the twenty-second day of September, 1896, at the city of New York, in my district, I personally served the within order upon George H. Sharpe, one of the within-named United States General Appraisers, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby certify that on the twenty-third day of September, 1896, at the city of New York, in my district, I personally served the within order upon George C. Tichenor and H. M. Somerville, two of the within-named United States General Appraisers, by exhibiting to each of them the within original, and

at the same time leaving with each of them a copy thereof.

Dated Oct. 1, 1896.

JOHN H. McCARTY,
United States Marshal, Southern District of New York.

Filed Oct. 6, 1896. W. J. Costigan, Clerk,

No. 15.

Findings of Fact and Conclusions of Law.

[Title of Court and Cause.]

This cause and proceeding having come on regularly for hearing and determination before the Court in the manner provided by law and the act of Congress of June 10, 1890, and evidence, oral and documentary, on behalf of appellant and respondent, having been introduced, heard, and considered, and the Court, after duly considering the law and the evidence, and being fully advised in the premises, having heretofore, on the sixteenth day of August, 1897, given and rendered its opinion herein:

Now, in accordance therewith, hereby makes and renders its decision, finding the following facts and conclusions of law respecting the classification of the merchandise involved herein, and the rate of duty imposed thereon under such classification:

Findings of Fact.

I.

The merchandise in question, consisting of 2,200 barrels of the article hereinafter mentioned and de-

scribed in the invoices as "liquid creosote," was imported from London, a port in the Kingdom of Great Britain, into the United States of America, at the Port of San Francisco, State and Northern District of California, on the nineteenth day of March, 1895, by the Southern Pacific Company, and thereupon said merchandise was entered at the customhouse at said port for immediate consumption.

II.

That thereafter said merchandise was by John H. Wise, as collector of said port, classified upon the return of the appraiser of such port as "distilled oil," dutiable at the rate of twenty-five per cent ad valorem, under paragraph 60 of the Tariff Act of August 27, 1894; and said entries were liquidated in accordance with such classification, and the duty upon said barrels of such merchandise so entered for immediate consumption as aforesaid, amounting to the sum of $1,472, was ascertained, levied, and collected by said collector.

III.

That thereafter said importer, being dissatisfied with such decision of the collector and said classification of the merchandise involved herein, made and gave due protest and notice of such dissatisfaction, on the ground that the merchandise in question is not a distilled oil, but should be admitted free of duty under paragraph 443 of the act of August, 1894, as a product of coal tar not specially provided for. Thereupon the invoice relating to the importation of said merchandise, and all the papers and exhibits connected therewith, were duly transmitted to the Board of United States General Appraisers on duty at the Port of New York, all as provided in said Customs Administrative Act of June 10, 1890.

IV.

That thereafter, on the twenty-seventh day of July, 1896, the said Board of United States General Appraisers, after taking evidence therein, made and rendered their decision in said matter, sustaining the decision of said collector, and overruling said protest, and holding and deciding that said merchandise was not a product of coal tar to be admitted free of duty, but was and is a "distilled oil," and subject to a duty of twenty-five per cent ad valorem, under paragraph 60 of said act of 1894.

V.

That thereafter, in due and proper time, the said importer, being dissatisfied with said decision of the said Board of United States General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise, and the rate of duty imposed thereon under such classification, and in manner and form as required by law and section 15 of said act of June 10, 1890, applied to this Court for a review of the questions of law and fact involved in such decision of the said Board of General Appraisers; and such proceedings were thereupon had that further evidence was duly taken before a special referee appointed by this Court, and introduced and considered herein as heretofore stated.

VI.

That the merchandise comprising the importation involved in this application and petition for review was on and before the said nineteenth day of March, 1895, and now is, known in trade and commerce as "creosote oil," or "dead oil," and was and is a pro-

duct of coal tar, obtained therefrom by fractional distillation.

VII.

That said merchandise was not, nor is it, a product or preparation commonly or commercially or chemically, or otherwise, known as a distilled oil, but was and is a product of coal tar, not a color or dye, and not otherwise specially provided for in said act.

Conclusions of Law.

As conclusions of law the Court finds:

1.

That this Court has jurisdiction of the matters involved herein.

2.

That the merchandise in question is embraced within the terms and subject to the provisions of paragraph 443 of the Tariff Act of August 28, 1894; is not dutiable, but is entitled to be admitted free of duty under paragraph 443 of the said act.

3.

The decision of the Board of United States General Appraisers herein is hereby reversed and set aside, and the action of said collector in assessing and liquidating the amount of duties as aforesaid is hereby held to be erroneous.

4.

The importer, Southern Pacific Company, is entitled to a judgment therefor without costs.

Let judgment be entered in accordance herewith.

Dated August 27, 1897.

WM. W. MORROW,
Judge.

No. 16.

Judgment. (a)

[Title of Court and Cause.]

This matter having come on regularly for hearing before the Court upon the pleadings, and the proofs taken and filed herein, counsel for petitioner and for the respondent appearing, and the same having been argued and submitted to the Court for consideration and decision, and the Court, after due deliberation, having filed its findings and decision in writing, and ordered that judgment be entered herein in accordance therewith, but without costs:

Now, therefore, by virtue of the law and by reason of the findings and decision aforesaid, it is considered by the Court that the merchandise in question in this matter is embraced within the terms and subject to the provisions of paragraph 443 of the Tariff Act of August 28, 1894; is not dutiable, but is entitled to be admitted free of duty under paragraph 443 of said act.

It is further considered and adjudged that the decision of the Board of United States General Appraisers herein sought to be reviewed be, and the same hereby is, reversed and set aside, and it is further considered and adjudged that the action of the collector of customs for the Port of San Francisco, in assessing and liquidating the amount of duties upon the merchandise in question herein, be, and hereby is, held to be erroneous.

Judgment entered August 27, 1897.

SOUTHARD HOFFMAN,
Clerk.

(a) 82 Fed. Rep. 311.

No. 17.

Petition for Review by Collector. (a)
(Under Act of June 10, 1890.)

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

THE PETITION AND APPLICATION OF JOHN H. WISE, Esq., Collector of Customs for the port of San Francisco, State of California, for a review under an Act of Congress, approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of the revenues," of the questions of law and fact involved in a decision of the Board of General Appraisers on duty at the port of New York, in the matter of the classification of certain flour merchandise imported by Chew Hing Lung & Co.

To the Honorable, the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

The petition and application of John H. Wise respectfully shows:

That your petitioner is, and at the several times hereinafter mentioned, was collector of customs for the port of San Francisco, State of California.

That Chew Hing Lung & Co., hereinafter mentioned, at the several times hereinafter referred to, were and are a partnership, doing business as merchants and importers of foreign merchandise in the

city and county of San Francisco, State of California, under the firm name of Chew Hing Lung & Co.

That on or about the second day of November, A. D. 1895, the said Chew Hing Lung & Co. imported into the United States, to wit, at the port of San Francisco, California, from Hong Kong, a port or place in the empire of China, certain merchandise, invoiced as "sago flour" by the vessel known as the bark "Cimbria," which said merchandise purports to be more fully described in and by the inward foreign entry thereafter made thereof at the customhouse at the said port of San Francisco, California, and numbered 6075, the said merchandise being more fully described as the merchandise subject to entry number 6075, and protest number 3475 of the official serial numbers of said customhouse, and subject to decision number 21803 B. of the official serial numbers of the Board of United States General Appraisers on duty at New York, State of New York, and being further described and identified as "S. O. L. 51-48 Boxes Sago Flour" upon the customhouse record invoices relating to said merchandise.

[Petition then alleges:—Classification by the appraiser as starch, dutiable at two (2) cents per pound:—that

Said entry was liquidated, upon the classification and said duty paid:—that

Within ten days after such ascertainment, liquidation, and payment of said duties, to wit, on the second day of December, A. D. 1893, the said Chew Hing Lung Co., being dissatisfied with said classification, etc., etc. (alleges giving notice claiming) free entry as tapioca, under paragraph 730 of said act, or as sago flour, under paragraph 695 of said act, or at one-quarter of one cent per pound, as rice flour, under paragraph 261 of said act, or at 20 per cent ad valorem under section 4 of said act of October, 1890:—that

Thereafter, in due and proper time, your petitioner transmitted all the papers and exhibits on which said entry was made, or connected therewith, to the Board of the United States General Appraisers, etc. (See allegation in Form 12.)]

And your petitioner avers that as such collector he is dissatisfied with the decision of the said Board of General Appraisers as to the construction of the law respecting the classification of the said merchandise and the duty imposed thereon.

Wherefore, your petitioner, as such collector, now applies to this Honorable Court for a review of the questions of law and fact involved in said decision of of said Board of General Appraisers.

And in respect to said entry and the said payment your petitioner specifies as the reasons for his objections thereto, as follows, to wit: (Specify reasons).

(Prayer for order of return, etc., see Form 12.)

(Prayer for costs and general relief.)

JOHN H. WISE.
Collector of Customs of the Port of San Francisco.

CHAS. A. GARTER,
United States Attorney and Attorney for Petitioner.

(a) Reported 77 Fed. Rep. 734; 48 U. S. App. 517.

No. 18.

Order of Court (a).

(See Form No. 17.)

[Title of Court and Cause.]

Whereas, John H. Wise, Collector of the port of San Francisco, California, has applied to this Court

to review the questions of law and fact involved in the decision of the U. S. General Appraisers on duty at the port of New York, State of New York, made and rendered by said U. S. General Appraisers on the fifteenth day of October, A. D. 1894, classifying as starch certain merchandise imported into the United States at the port of San Francisco, California, and entered at the customhouse of San Francisco, California, the said merchandise being more fully described as sago flour, being the merchandise subject to entry number 6075 and protest number 3475 of the official serial numbers of said customhouse, and also subject to said decision number 21803-B of the official serial numbers of the said U. S. General Appraisers, to which said numbers reference is here made, and being further identified as "S. O. L. 51-48 Boxes Sago Flour" upon the customhouse record invoice relating to said merchandise.

And whereas, the said John H. Wise, as Collector, has duly filed his application and petition for a review of said decision, and praying among other things that the said U. S. General Appraisers be ordered to return to this Court the records and evidence taken by them in the said cases, together with a certified statement of the facts involved in the cases, and their decisions thereon.

Now, therefore, in consideration of the premises, it is hereby ordered that the three U. S. General Appraisers on duty at the port of New York, State of New York, do, with all convenient speed, return to this Court the record of said matters and the evidence taken by them therein, together with a certified statement of the facts involved in the case, and their decision thereon.

And it is further ordered that this order be entered upon the minutes of this Court and served on each

member of the said Board of General Appraisers, by delivering to each of them a certified copy thereof.

JOSEPH McKENNA,
Judge.

(a) 77 Fed. Rep. 734. See In re Blumlein, 45 Fed. Rep. 236.

No. 19.

Judgment. (a)

[Title of Court and Cause.]

This matter came on regularly for hearing, the parties appearing by their attorneys, Samuel Knight, Esq., Assistant U. S. Attorney, appeared on behalf of the petitioner, and Messrs. Page, McCutchen & Eells appeared on the part of the importers, Chew Hing Lung & Co. The matter was tried before the Court upon the pleadings, proofs and argument of counsel duly heard and considered, and the Court having found the facts and the conclusions of law therefrom, filed the same, and ordered that judgment be entered in accordance therewith.

Wherefore, by virtue of the law and the findings aforesaid it is ordered, adjudged, and decreed that the imported article named in the petition herein is properly classified under the head of tapioca, and that the decision of the Board of General Appraisers that it is free of duty be and is hereby sustained.

Entered January 11, A. D. 1897.

W. J. COSTIGAN,
Clerk.

(a) Reported 77 Fed. Rep. 734; 48 U. S. App. 517; 168 U. S. 711.

No. 20.

Complaint to Recover Drawback. (a)

[Title of Court and Cause.]

Charles R. Allen, a resident of the city of Oakland, county of Alameda, in the Northern District of California, files this his petition in an action to recover the amount of certain drawbacks due him by the United States of America on imported bituminous coal used for fuel on board of vessels of the United States, and complains and avers as follows:

I.

That, pursuant to the provisions of an act of Congress of the United States, approved March 3, 1883, entitled "An act to reduce internal revenue taxation and for other purposes;" and the act of Congress approved June 19, 1896, entitled "An act to abolish certain fees to American vessels and to amend the laws relative to shipping commissioners, seamen, and owners of vessels, and for other purposes," providing for the allowance and payment of a drawback on bituminous coals imported from foreign countries into the United States and afterwards used for fuel on board of vessels of the United States, propelled by steam, which are engaged in the coasting trade of the United States or in the trade with foreign countries under such regulations as the Secretary of the Treasury of the United States shall provide, the said secretary did, on the eighth day of September, 1887, provide and promulgate certain regulations for the allowance and payment in the case in said statute provided, a copy of which regulations is hereunto annexed and hereby referred to and made a part hereof. That said regulations have,

since the date thereof, been the regulations applied for purposes of drawback to all coasting steam vessels, and have not been revoked, but the same are still in force.

II.

That heretofore, towit, on the fifth day of February, 1891, the plaintiff then and there being the owner of certain bituminous coals theretofore imported into the United States from a foreign country, which coals had, on being imported, paid the duty provided by said act of Congress, shipped thirty tons of said coal on the American steam vessel "Humboldt," a vessel of the United States, engaged in the coasting trade thereof, which coal so shipped was intended for use as fuel on board of said vessel; and this plaintiff did thereafter on the twelfth day of said February, 1891, being the owner of said coals, ship on board of said vessel thirty-three tons of bituminous coal, imported as aforesaid, for use on board thereof, as fuel in the trade aforesaid; and this plaintiff did thereafter, on the sixteenth and twenty-first days of said February, being the owner of said coals, ship on board of said vessel the further amount of thirty-three and one-half tons and twenty-one tons of bituminous coals, imported as aforesaid, for use on board thereof, as fuel in the trade aforesaid.

III.

That at least three hours before each of the shipments aforesaid the plaintiff filed with the surveyor of customs, at the port of San Francisco, an application for the inspection, weighing, and lading thereof, in accordance with the terms prescribed by said regulations of the secretary of the treasury, and requested that the said surveyor issue the order to the

weigher of the customs department, by the said regulations required to be issued, in order that the said coals might be inspected and weighed and the returns thereof delivered to the collector of the port and revenue district of San Francisco; but the said surveyor then and there declined and refused to issue said order to the weigher as required, and the same, notwithstanding the said application, was not issued, nor was said coal inspected or weighed as required by the said regulations. That prior to the time the said applications, and each of them, were made, the plaintiff had filed the bonds required by the said regulations, and the same had been accepted by the officers therewith intrusted.

IV.

That within ten days after the expiration of the said month of February, 1891, the plaintiff, in accordance with said regulations, filed with said collector an entry for drawback on the coals so shipped on said "Humboldt," setting forth the quantity taken on board under each of the applications hereinbefore described in the form required by said regulations, and accompanied the said entry with oath in the form set forth in said regulations, and then and there requested that a certain certificate of drawback on the coals so shipped during the said month on said steamship, payable twenty days thereafter, as prescribed by said regulations, be issued to him, but the said officer then and there refused to issue the same, or to pay the said drawback, or to recognize the right of the plaintiff thereto; and this plaintiff further avers that, except in receiving the application for weighing, the said officers refused to take any step or to do anything whatever in the matter

of said drawback, notwithstanding the provisions of said statutes and of said regulations in that behalf, for the benefit of this plaintiff.

V.

That the coal laden as aforesaid on board of said "Humboldt" was of the actual weight hereinbefore set forth, and was thereafter actually consumed as fuel in said vessel, and was not, nor was any part thereof, relanded in the United States.

VI.

That twenty days after the filing of the entry last described the plaintiff became and was entitled to a drawback for the sum of seventy-five cents per ton, shipped as aforesaid, less one per centum on said amount, towit, $93.94, and to payment of said amount.

That no part of said amount has been paid to the plaintiff, and the same is now due and owing to him.

Wherefore plaintiff prays judgment upon the facts and law against the defendant, the United States, for the sum of $93.94, with interest from the twentieth day of March, 1891, and for costs.

PAGE & BELLS,
Attorneys for Plaintiff.

(Here follow the circular and regulations).

(a) Reported 52 Fed. Rep. 575; 15 U. S. App. 252.

No. 21.

Petition for Remission of Penalty for Violation of Revenue Laws Through Ignorance or Mistake. (b)

To the Honorable the judges of the Supreme Court of the United States:

The petition of A. B., master of the ship "Isle of Man," of San Francisco, California, whereof C. D. is sole owner, respectfully represents:

That the said ship, laden with a cargo of rice, arrived at the port of San Francisco from Rangoon on the ——day of ——,18——, and was moored at pier No. 28 on the seawall.

That the deckload of the ship was discharged under the supervision of the proper customhouse officer on the days succeeding the —— day of ——, and that the discharge was completed on the evening of the ——day of the said month.

That on the morning of the ——day of the said month the stevedore, having waited for about an hour for the appearance of an officer of the customs, in the absence of an officer directed one of the hatches to be removed in order that the gas in the hold might escape and thus facilitate the discharge of the rest of the cargo. That this removal was made without the knowledge or consent of your petitioner, and without in any way disturbing or discharging any part of the cargo, as more fully appears by the affidavits hereto annexed, and to which your petitioner craves leave to refer.

That the collector of the port has deemed it his duty to impose a fine of $500 on the vessel, which sum the collector informed your petitioner must be paid before a clearance could be granted to the vessel.

Thereupon, on the ——day of ——,18——,your petitioner paid the fine imposed as aforesaid.

Your petitioner confesses that the act of the stevedore in removing the hatches was imprudent and in violation of law, but your petitioner protests that the act was done without the knowledge or consent of your petitioner, that it was done ignorantly and innocently by the stevedore, and that no fraud upon the revenue of the United States was intended or has been practiced.

Wherefore, your petitioner prays your Honors to examine into the truth of the allegations herein set forth, and to certify as to the facts of this case, and to cause the said certificate to be annexed to this petition and to be transmitted to the Honorable the secretary of the treasury of the United States, according to the form and effect of the act of Congress in such case made and provided, to the end that the said fine so imposed upon your petitioner as aforesaid may be remitted.

A. B.

(Annex affidavits.)

(b) Pugh's Forms in Admiralty; R. S. U. S. sec. 5292; 51 Fed. Rep. 877, 879; Desty's Fed. Proc., sec. 499.

No. 22.

Petition of Informer to Share in Proceeds of Goods, etc., Forfeited. (a)

[Title of Cause.]

To the Honorable, the judges of the Supreme Court of the United States:

The petition of E. F. respectfully represents that he is and was at the time of the seizure of the goods

mentioned in the libel filed in this case deputy surveyor for the port of ————.

That he claims as informer to be entitled to a share of the forfeiture incurred in the above case; that he did first inform of the cause, matter and thing whereby said forfeiture was incurred, and gave such information to ————, Esq., the collector of the port of ————; wherefore he prays that a share of said forfeiture may be awarded to him by the judgment of the Court.

E. F.

(a) Annex affidavit.

From Pugh's Forms in Admiralty. See In re Jayne, 24 Fed. Rep. 419; Stat. June 22, 1874, ch. 391, sec. 6; 18 Stat. 186.

No. 23.

Information Under Revenue Laws. (a)

[Title of Court and Cause.]

To the Honorable, etc.

Be it remembered that on the —— day of ——, 18—, comes A, as attorney of the United States for the said ——, District of ————, in a cause of seizure on land (or on waters not navigable), under the revenue laws of the United States, and informs the Court:

That on the —— day of ——, 18—, at ————, in the District aforesaid, on land within the District aforesaid (or on waters not navigable) C, collector of customs for the collection district of ————, did seize (describe property), and now holds the same in his custody within the —— district of ———— aforesaid, as forfeited to the United States for the causes hereinafter stated, to-wit:

I.

For that heretofore, towit, on the —— day of ——, 18—, at the port of ————, in said district, and on the waters navigable from the sea by vessels of ten or more tons burden, he, the said C, collector as aforesaid, did seize and now has in his custody, as being forfeited, a certain vessel or ship called the ————, her tackle, apparel and furniture, and that on said ship at the time aforesaid certain goods, wares and merchandise, towit (describe them—e. g.: 6 hogsheads of West India rum, being of the value, according to the highest market price at the port of ————, of $600), were brought from a foreign port or place into the United States, to wit, into the port of ————, and that thereafter, on the same date last mentioned, the said goods, wares and merchandise, having been imported and brought as aforesaid, were unladen and delivered from the said ship or vessel within the United States, to wit, at said port of ————, without a special license or permit for such unlading and delivery from the collector, naval officer, or any other competent officer of the said port (although a collector, naval officer and other officers of the customs were then and there duly and legally established at said port), and contrary to the statue in such case made and provided.

II. (b)

That by reason of all and singular the premises aforesaid, and by force of the statute in such case made and provided, the aforesaid property, goods, wares and merchandise as hereinbefore set forth became and are forfeited to the United States.

III.

That all and singular the premises are true and within the jurisdiction of this honorable Court.

Wherefore he prays that the usual process and monition against the said property, goods, wares and merchandise be issued in this behalf, and that all persons interested in said property, goods, wares and merchandise may be cited to answer the premises, and all due proceedings being had thereon that the said property, goods, wares, and merchandise, as hereinbefore set forth, may, for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this honorable Court as forfeited to the United States, according to the form of the statute of the United States in such case made and provided, and that the said property, goods, wares and merchandise may be sold and the proceeds thereof distributed and disposed of according to law.

_____,

United States District Attorney.

(a) From Bump's Federal Procedure; Desty's Federal Procedure, sec. 52.

(b) Note.—For other counts in particular cases, see Forms Nos. 24, 25, 26, 27.

COUNTS IN LIBEL OF INFORMATION.

No. 24.

When the Ship and Port are Unknown. (a)

For that the said goods, wares and merchandise, after the —— day of ————, 18—, and before the seizure thereof as aforesaid, were brought into

some port or place of some district of the United States to the said attorney as yet unknown in some ship or vessel to the said attorney as yet unknown, and the said goods, wares and merchandise being so brought as aforesaid afterward, to wit, between the ——— day of ————, and the seizure aforesaid were unladen and delivered from the said ship or vessel within the United States in some port or place of the district aforesaid, without a permit or special license from the collector or naval officer, or any other competent officer of the customs of the port or district where the same were so unladen and delivered for such unlading or delivery, against the form of the statute in such case made and provided.

(a) From Bump's Federal Procedure.

Concealment of Merchandise. (a)

No. 25.

And also for that the said goods, wares and merchandise, being subject to duties by the statutes of the United States, were after the ——— day of ————, 18—, and before the seizure aforesaid brought into the United States, and being so brought as aforesaid were found concealed in a certain ——— at ————, in the district aforesaid, the duties on said goods, wares and merchandise not having been before that time paid, or secured to be paid, against the form of the statute in such case made and provided.

(a) From Bump's Federal Procedure.

No. 26.

Where Ship's Owner Unknown and Merchandise not in Manifest. (a)

And for that at a time past, to wit, on the ——— day of said ——— the said goods, wares and merchandise were brought in a certain ship or vessel called the ———, then and there belonging to a citizen or citizens inhabitant or inhabitants of the United States, whose name or names are to the said attorney or attorneys of the United States as yet unknown, from a foreign port or place, that is to say, the port of ———, in ———, into the United States, to wit, into the port of ———, aforesaid and that the said goods, wares and merchandise then and there belonging, or consigned, to the master, the mate, or the crew of the said vessel, were not described or included in the manifest or manifests of the cargo of the said ship or vessel as is required by law, against the peace and dignity of said United States, and contrary to the form of the statute of the United States in such case made and provided.

(a) From Bump's Federal Procedure.

No. 27.

Secret Landing. (a)

And that when said vessel reached said place called ———, in the district of ———, as aforesaid, and within the admiralty jurisdiction of this Court, and on her way to the port of ———, the said merchandise was in the night-time, and with the knowledge, privity and consent, and by the aid and assistance of said master and said party hav-

ing control of the navigation and employment of the ship, secretly, unlawfully and irauduleutly unloaded from said vessel at said place called ————, without a permit or license to unload the same from collector or other officer of customs, or any officer of the United States, and without any permit or license whatever for so unloading, and without being compelled so to do by reason of unavoidable necessity or stress of weather, contrary to the statutes of the United States in such cases made and provided, by reason whereof, and by force of sections 2867, 2871, 2873, 2874 and 3088 of the Revised Statutes of the United States, the said master and mate of said vessel have each respectively incurred a penalty and become indebted to the United States in the sum of $——, and the further sum of $——, and the said vessel has become and is now subject to a lien for said penalty.

(a) The Haytian Republic, 57 Fed. Rep. 508.

No. 28.

Affidavit of Service.

[Title of Court and Cause.]

C. P., being duly sworn, says:

I am a member of the firm of ————, attorneys for the petitioner in the above-entitled cause. I am a male citizen of the United States over the age of 21 years. On this —— day of ————, 18—. at the request of the petitioner, I handed to Mr. ———, United States attorney for the District of ————, a certified copy of the petition of said petitioner now on file in said Court in the above-en-

titled cause, and on the same day, on like request, mailed a certified copy of said petition to the attorney general of the United States at Washington, D. C., by registered letter.

Sworn to, etc.

Section IV.

CHINESE EXCLUSION ACT.

No. 29.

Affidavit of Complaint. (a)

United States of America,
Southern District of California. } ss.

Be it remembered that on this thirty-first day of July, in the year of our Lord one thousand eight hundred and ninety-five, before me, William M. Van Dyke, a commissioner duly appointed by the Circuit Court of the United States of America, for the Southern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, etc., pursuant to the acts of Congress in that behalf, personally appeared R. S. Williams, who, being duly sworn according to law, deposes and says that as he is informed and believes and therefore alleges the fact to be, Chung Shee heretofore, towit, on the sixteenth day of June, in the year of our Lord one thousand eight hundred and ninety-three, and within the jurisdiction of the United States aforesaid, and of this Honorable Court, and after the passage by the Congress of the United

States of an act entitled: "An act to amend an act entitled 'An act to execute certain treaty stipulations relating to Chinese, approved May 6, 1882,'" one Chung Shee (a Chinese woman) did come into the United States from a foreign place, and, having come, has remained within the United States; that the said Chung Shee has been found and now is unlawfully within the United States, and that at all the times herein mentioned the said Chung Shee was and is a Chinese laborer, contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

Sworn, etc.

(a) Reported 71 Fed. Rep. 277; 44 U. S. App. 751.

No. 30.

Warrant to Apprehend. (a)

Southern District of California.—ss.

The President of the United States of America, to the Marshal of the United States, for the Southern District of California, and to his deputies, or any or either of them, Greeting:

Whereas, complaint on oath hath been made to me charging that Chung Shee, on or about the sixteenth day of June, in the year of our Lord one thousand eight hundred and ninety-three, and within the jurisdiction of the United States, and within the jurisdiction of the honorable, the Circuit Court of the United States, of the Ninth Circuit, in and for the Southern District of California, and after the passage by the Congress of the United States of an act entitled:

"An act to amend an act entitled 'An act to execute certain treaty stipulations relating to Chinese, approved May 6, 1882,'" one Chung Shee (a Chinese woman) did come into the United States from a foreign place, and having come has remained within the United States; that the said Chung Shee has been found and now is unlawfully within the United States, and that at all the times herein mentioned the said Chung Shee was and is a Chinese laborer.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Chung Shee and bring her body forthwith before me, a commissioner appointed by the Circuit Court of the United States, for the Southern District of California, at my office, at the city of Los Angeles, that she may then and there be dealt with according to law for the said offense.

Given under my hand this thirty-first day of July, in the year of our Lord one thousand eight hundred and ninety-five, and of our Independence the one hundred and twentieth.

WM. M. VAN DYKE,

Commissioner of the U. S. Circuit Court for the Ninth Circuit, in and for the Southern District of California.

(a) 71 Fed. Rep. 277.

No. 31.

Findings, Order, and Judgment. (a)

[Title of Court and Cause.]

Whereas, Chung Shee stands charged on oath before me, Wm. M. Van Dyke, a commissioner duly

authorized and empowered by the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California, to take affidavits and bail in civil causes depending in the Courts of the United States, and to execute all the powers and perform all the duties conferred, required, or authorized by any act of Congress now in force or which may hereafter be passed, as follows, to wit: That with n the jurisdiction of the United States aforesaid and of this Honorable Court, and after the passage by the Congress of the United States of an act entitled "An act to amend an act entitled 'An act to execute certain treaty stipulations relating to Chinese, approved May 6, 1882,'" she, the said Chung Shee, did come into the United States from a foreign place, and, having come, has remained within the United States; that the said Chung Shee has been found and now is unlawfully within the United States. and that at all the times herein mentioned the said Chung Shee is and was a Chinese laborer, and

Whereas, the said Chung Shee was duly apprehended upon said charge in the Southern District of California, and

Whereas, an examination was thereupon had by me of said Chung Shee upon the said charge, from which examination and from the evidence adduced before me, it appears to me that the said Chung Shee is, by race, language, color and dress a Chinese person, and a laborer by occupation, and

Whereas, said Chung Shee has failed to establish by affirmative proof to my satisfaction her lawful right to remain in the United States, and

Whereas, said Chung Shee has not made it appear to me that she is a subject or citizen of any other country than China, and

Whereas, from the foregoing facts I find and adjudge said Chung Shee to be unlawfully within the United States,

Now, therefore, I order that said Chung Shee be removed from the United States to China, and I order that said deportation of the said Chung Shee be made from the port of San Francisco, within the limits of the Northern District of California, and I further order that said Chung Shee be, and she is hereby, committed to the United States marshal for the Southern District of California for the purpose aforesaid.

Los Angeles, California, August 19, 1895.

WM. M. VAN DYKE,

Commissioner of U. S. Circuit Court, Ninth Judicial Circuit, Southern District of California.

(a) 71 Fed. Rep. 227.

No. 32.

Notice of Appeal. (a)

[Title of Court and Cause.]

To George J. Denis, United States attorney, William M. Van Dyke, United States commissioner, E. H. Owen, Clerk of the United States District Court, and Nicholas A. Covarrubias, United States marshal, all in and for the Southern District of the State of California, and to R. S. Williams, United States Customs inspector in and for the Northern District of the State of California:

You will please take notice that Lum Lin Ying, charged and examined as, for, and in the name of Chung Shee in the above-entitled action, by and be-

fore the Hon. William M. Van Dyke, United States commissioner in and for the Southern District of the State of California, and by him under the complaint therein, on the nineteenth day of August, 1895, found and adjudged guilty of being unlawfully within the United States and ordered deported therefrom to the Empire of China, hereby appeals from said finding and order to the District Court of the United States in and for the Southern District of the State of California, and to the judge of said Court.

You will further take notice that said appeal is taken on questions of both law and fact.

Dated August 19, 1895.

Yours, etc.

MARBLE & PHIBBS,
Attorneys for Lum Ling Ying.

(a) 71 Fed. Rep. 277.

No. 33.

Order to Take Depositions. (a)

At a stated term, etc.

Present, the Honorable Olin Wellborn, District Judge.

[Title of Cause.]

Appeal from the order of deportation of U. S. commissioner Van Dyke.

George J. Denis, Esq., U. S. attorney, present for the government; Geo. P. Phibbs, Esq., present for defendant.

Upon reading and filing the affidavit of defendant, and upon the complaint, affidavit and papers and records in this action, it is ordered that a commission

issue out of and under the seal of this Court, directed to Roswell B. Lamson, United States commissioner at Portland, Oregon, to take the testimony of Horatio Cooke, Poon See, Ng Ton Chen, G. W. P. Joseph, B. Breekman, and T. J. Black, residing in said city, as witnesses on behalf of said defendant, upon such interrogatories, direct and cross, as respective parties may agree upon; if the parties disagree as to their form, then the same shall be settled by the Court on September 2, 1895, at 10:30 A. M.

It is further ordered that the trial of this cause be set for September 20, 1895, at 10:30 A. M.

(a) 71 Fed. Rep. 277.

No. 34.

Judgment of Reversal. (a)

At a stated term, etc.

[Title of Cause.]

Violation of Chinese Exclusion Act (Chinese laborer unlawfully within the United States).

George J. Denis, Esq., U. S. attorney, and Frank G. Finlayson, Esq., assistant U. S. attorney, present for the government; Marble & Phibbs, Esqs., present for defendant.

This cause having been heretofore tried and submitted to the Court for its consideration and decision, and the Court having fully considered the same, now renders its written opinion and orders that the judgment and order of the commissioner be reversed and that defendant be discharged.

(a) 71 Fed. Rep. 277.

No. 35.

Bill of Exceptions. (a)

[Title of Court and Cause.]

Be it remembered that on the twenty-sixth day of September, in the year of our Lord one thousand eight hundred and ninety-five, before me, Olin Wellborn, judge of the United States District Court, for the Southern District of California, sitting as such judge, this cause, on appeal from the order and judgment of Wm. M. Van Dyke, Esq., United States commissioner for said District, came on regularly for trial, George J. Denis, Esq., United States attorney for the Southern District of California, appearing on behalf of the government, and Messrs. Marble & Phibbs appearing for the defendant, whereupon the record on said appeal showed and proved the following facts, towit:

On the thirty-first day of July, 1895, a complaint was duly sworn to and verified by one R. S. Williams, before said Wm. M. Van Dyke, United States commissioner, as aforesaid, and filed with said commissioner, alleging that Chung Shee, a Chinese woman, did, on the sixteenth day of June, 1893, come into the United States from a foreign place, and, having come, has remained within the United States, and that said Chung Shee has been found and, at the date of filing said complaint, was unlawfully within the United States, and that at all the times in said complaint mentioned she was a Chinese laborer, contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States;

That thereupon, and on said thirty-first day of July, 1895, a warrant, in due form, was issued by said

commissioner for the arrest of said Chung Shee, commanding the marshal of said district to bring her forthwith before said commissioner;

That said marshal, pursuant to said warrant, arrested the defendant herein on said thirty-first day of July, 1895, and brought her before said commissioner, whereupon, upon arraignment, she gave her true name as Lum Lin Ying;

That on the ninth day of August, 1895, a trial of said defendant upon said complaint was had before said commissioner, at his office in the city of Los Angeles, State of California, George J. Denis, United States attorney, appearing on behalf of the government, and Messrs. Marble & Phibbs on behalf of the defendant, whereupon witnesses on behalf of the government were examined and testified, and the cause submitted to the commissioner for his decision;

That on the nineteenth day of August, 1895, the said commissioner gave, made and filed in writing his findings, order and judgment in said cause, wherein and whereby said commissioner did expressly find that at the time of filing said complaint and of the rendition of said judgment, said defendant was, by race, language, color and dress, a Chinese person, and a laborer by occupation; that she had failed to establish, by affirmative proof, to the satisfaction of said commissioner, her lawful right to remain in the United States, and said commissioner did find and adjudge said defendant to be unlawfully within the United States, and did order that said defendant, whose name in said order was recited as Chung Shee, be removed from the United States to China, it not appearing that she was a subject or citizen of any other country than China, and did further order that said deportation of said defendant be made from the port of San Francisco,

within the limits of the Northern District of California, and did further order that said defendant be and she was committed to the custody of the United States marshal for the Southern District of California for the purposes of said deportation;

That thereafter, to wit, on the twenty-second day of August, 1895, said defendant duly appealed from said findings, order and judgment of said commissioner to me, Olin Wellborn, the judge of said District Court;

That on the twenty-sixth day of September, 1895, the said cause, on appeal as aforesaid, came on regularly for hearing before me, the said Olin Wellborn, sitting as said judge, in the District Court of the United States, for the Southern District of California, whereupon the following proceedings were had and the following testimony given:

* * * * * * * * * *

Thereupon, to wit, on the said twenty-sixth day of September, 1895, at the courtroom of the District Court of the United States, for this the Southern District of California, the cause was submitted to me, Olin Wellborn, judge of said Court, for my decision, on the evidence adduced and briefs thereafter to be filed, and thereafter, to wit, on the second day of December, 1895, I, as judge of said Court, filed with the clerk my opinion herein, and ordered the judgment and order of the commissioner, W. M. Van Dyke, to be reversed, and the defendant discharged, to which order the United States duly excepted.

Thereafter, to wit, on the —— day of December, 1895, judgment accordingly was regularly entered herein, to which judgment the United States duly excepted.

The foregoing is a statement of all the proof made, and evidence adduced at, and proceedings had upon,

the hearing and trial of this action before me, Olin Wellborn, judge of the District Court of the United States for the Southern District of California, on appeal from the order and judgment of the said commissioner, Wm. M. Van Dyke.

And, now, that the foregoing matters may be made a part of the record, the undersigned, judge of the said District Court of the United States for the Southern District of California, at the request of the plaintiff, the United States of America, doth hereby allow, settle, and sign, within the time allowed by law and the order of the undersigned, the foregoing bill of exceptions, and order the same to be filed.

OLIN WELLBORN,
District Judge.

(a) 71 Fed. Rep. 277; 44 U. S. App. 751.

No. 36.

Petition for Writ of Error. (a)

[Title of Court and Cause.]

Comes now the United States of America, plaintiff herein, and says:

That on or about the second day of December, 1895, this Court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in its behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the cor-

rection of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

GEORGE J. DENIS,
United States Attorney.

(a) 44 U. S. App. 751.

No. 37.

Assignment of Errors. (a)

[Title of Court and Cause.]

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred upon the trial of this cause, to wit:

1. The Court erred in not holding that the order and decision of Judge Hawley, in the habeas corpus proceedings in the District Court of the United States, for the Northern District of California, directing the return of Chung Shee to steamship "Peru," to be hence taken to Hong Kong, China, was conclusive against the right of the defendant to be and to lawfully remain within the United States.

2. The Court erred in holding that Judge Bellinger's judgment and decision in the habeas corpus proceedings in the District Court of the United States, for the District of Oregon, was a conclusive adjudication of the defendant's right to be and lawfully remain within the United States, and conclusive of that right in this action.

3. The Court erred in holding that said decision of Judge Bellinger was res adjudicata in his action.

4. The Court erred in holding that said decision of Judge Bellinger could not be attacked in this action for fraud, and erred in not holding that said decision was inoperative in this action as a conclusive or any determination of defendant's right to be and lawfully remain within the United States by reason of the fraud practiced by defendant upon Judge Bellinger and the officers of the United States Government.

5. The Court erred in not finding and holding that the defendant was an unregistered Chinese "laborer," unlawfully within the United States.

6. The Court erred in reversing the judgment and order of the commissioner.

7. The Court erred in discharging the defendant from custody and in adjudging that she was lawfully entitled to be and remain within the United States.

_____,
United States Attorney.

(a) 44 U. S. App. 751.

No. 38.

Joinder in Error. (a)

[Title of Court and Cause.]

Now comes freely into Court, Lum Lin Ying, defendant in error, charged herein as Chung Shee, by Marble & Phibbs, her attorneys, and says:

That there is no error in the record and proceedings in said cause or in the giving of the judgment therein, and she prays that the said Circuit Court of Appeals, before the justice thereof, now here, may proceed to examine the record and proceedings afore-

said, as to the matters assigned for error herein and that the judgment, aforesaid, in form, as aforesaid given, may be in all things affirmed and she be hence dismissed.

Dated Los Angeles, Cal., April 9, 1896.

MARBLE & PHIBBS,
Attorneys for defendant in error.

(a) 44 U. S. App. 751.

No. 39.

Writ of Error. (a)

United States of America—ss.

The President of the United States of America to the Judge of the District Court of the United States, for the Southern District of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court before you, between The United States of America, plaintiff in error, and Chung Shee, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, and it being duly fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California,

on Wednesday, the twenty-fifth day of March next, in the said Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, chief justice of the Supreme Court of the United States, this seventh day of March, in the year of our Lord one thousand eight hundred and ninety-six, and of the independence of the United States the one hundred and twentieth.

[Seal] E. H. OWEN,

Clerk of the District Court of the United States for the Southern District of California.

The above writ of error is hereby allowed.

OLIN WELLBORN,
United States District Judge.

(a) 44 U. S. App. 751.

CHAPTER II.

ADMIRALTY.

Section I.

Nature of Libels Under Admiralty Rules. (a)

Rule.	Suit.	Nature of action.
12	By materialmen.....	In rem or in personam.
13	Mariners' wages.....	n rem and (or) in personam.
14	Pilotage.....	In rem and (or) in personam.
15	Collision	In rem and (or) in personam.
16	Assault	In personam.
17	Hypothecation.....	In rem or in personam.
18	Bottomry.....	In rem.
18	Bottomry in special cases,	In personam.
19	Salvage.....	In rem or in personam.
20	Petitory and possessory...	Arrest and citation of parties.
46	Other than as above.....	As courts may prescribe for due administration of justice. (b)

(a) Desty Fed. Proc., sec. 52.

(b) 39 Fed. Rep. 807.

Section II.

Parties Respondent Under Admiralty Rules.

S.—Ship. F.—Freight. M.—Master. O.—Owner.

Rule.	Suit.	Respondents.
12	Materialmen.....	S. and F.
12	Materialmen.....	M.
12	Materialmen.....	O.
13	Wages.....	S., F., and M.
13	Wages.....	O.
13	Wages.....	M.
14 and 15	Pilotage or collision,	S. and M.
14 and 15	Pilotage or collision,	S.
14 and 15	Pilotage or collision,	O.
14 and 15	Pilotage or collision,	M.
16	Assault and battery,	In personam.
17	Hypothecation.....	S.
17	Hypothecation.....	M.
17	Hypothecation.....	O.
18	Bottomry.....	Property hypothecated, or proceeds.
18	Bottomry in case of fraud.....	The wrongdoer.
19	Salvage.....	The property saved the party benefited.

Section III.

No. 40.

Skeleton Libel Under Admiralty Rule 23.

Title of Court and Cause.

Commencement, (see Forms, No. 41).

State: First. Nature of cause; e. g., that it is a cause civil and maritime.

(Of contract.)

(Of tort or damage.)

(Of salvage.)

(Of possession, etc.)

Second. (If suit in rem.) That the property is within the jurisdiction.)

Third. (If in personam.) The names, occupations and residences of the parties.

Fourth. Allege the facts on which libelant relies in support of his suit.

Fifth. Conclusion. (See Form No. 42.)

Sixth. Interrogatories when required.

Commencements of Libels.

(41 a) In personam against master.

(41 b) In personam against owner or other person.

(41 c) In rem against vessel.

(41 d) In rem against vessel and in personam against master.

(41 e) In rem against vessel, cargo and freight.

(41 f) In rem against vessel, freight and master.

(41 g) For warrant of arrest for personal damage.

No. 41. (a)

To the Honorable ————, Judge of the District Court of the United States for the —— District of ——.

The libel and complaint of AB, of ————, late seaman on board the schooner "————," whereof

Z, of ————, now is, or late was, master, against the said Z in a cause of (cause of action; e. g. subtraction of wages, damages sur contract, collision, pilotage, etc.), civil and maritime, alleges as follows:

No. 41. (b)

To the Honorable, etc.

The libel and complaint of AB, of ————, ship chandler, against Z, of ————, owner of the schooner "————" (or merchant) in a cause of contract, civil and maritime, alleges as follows:

No. 41. (c)

To the Honorable, etc.

The libel and complaint of AB, of ————, late mariner of the (steam) ship "Z," whereof XY, of ————, now is, or late was, master, against the said (steam) ship, her (engines, boilers, machinery), tackle, apparel and furniture, and all persons lawfully intervening for their interest therein in a cause of (state cause of action), civil and maritime, showeth:

No. 41. (d)

To the Honorable, etc.

The libel and complaint of AB, of ————, late mariner of the (steam) ship "Z," whereof XY, of ————, now is, or lately was, master, against the said (steam) ship, her (engines, boilers, machinery), tackle, apparel, and furniture, and also against the said XY in a cause of subtraction of wages, civil and maritime, showeth:

No. 41. (e)

To the Honorable, etc.

The libel and complaint of AB, of ————, against the (steam) ship "Z," whereof XY of ————, now is, or late was, master, her (engines, boilers, machinery), tackle, apparel, and furniture, and against [the cargo of ————, laden on board of the said vessel and] the freight due for the transportation of the [said] cargo in a cause of damage sur contract, civil and maritime, showeth:

No. 41. (f)

To the Honorable, etc.

The libel and complaint of AB, of ————, late seaman on board the (steam) ship "Z," whereof XY, of ————, now is, or late was, master, against the said (steam) ship, her (engines, boilers, machinery), tackle, apparel and furniture, and the freight due for the cargo now or lately laden on board of her [and against the said XY, master], in a cause of subtraction of wages, civil and maritime, showeth:

No. 41. (g)

To the Honorable, etc.

The libel and complaint of AB, of ————, late seaman on board the (steam) ship "Z," against XY, of ————, master, and VW, of ———, chief mate of the said (steam) ship, in a cause of personal damage, civil and maritime, showeth:

Conclusions of Libels.

(42 a) In personam.

(42 b) In rem against vessel.

(42 c) Additions when libel includes cargo and freight.

(42 d.) In personam for warrant of arrest.

(42 e.) In rem against cargo.

No. 42. (a))

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Wherefore he prays that a citation [or monition], according to the course and practice of this honorable Court in causes of admiralty and maritime jurisdiction, may issue to the said XY (master or owner, etc.), citing and admonishing him to appear and answer all and singular the matters aforesaid, and that the Court will pronounce for (state the relief sought; e. g., the wages [or damages]), aforesaid, with interest and costs, and will give to the libelant such further and other relief as in law and justice he may be entitled to receive.

AB.

————,

Proctor.

(Add verification of libel.)

No. 42. (b)

That the said (steam) ship is now in the port of ————, within the District of ————.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

Wherefore, the libelant prays that process of attachment in due form of law, according to the due course of this honorable Court in causes of admiralty and maritime jurisdiction, may issue against

the said (steam) ship "Z," her (engines, boilers, machinery), tackle, apparel and furniture (here insert if desired (a) from Form 42 c), and that the said XY, master, and all other persons having or pretending to have any right, title or interest therein, may be cited to appear and answer all and singular the matters so articulately propounded, and that this honorable Court will be pleased to pronounce for the wages aforesaid (insert (b) from Form 42 c, if necessary), [and for such other relief to the libelant as shall to law and justice appertain; and also to condemn the said (steam) ship, her (engines, boilers, machinery), tackle, apparel and furniture, and the party intervening in costs]—[or, with costs, and that the said (steam) ship, her (engines, boilers, machinery), tackle, apparel and furniture, may be condemned and sold to pay the same, and that the court will grant to the libelant such other and further relief as shall to law and justice appertain.]

No. 42 (c)

(a) And against the (state cargo), lately laden on board of said vessel [and against the freight due for the transportation of the [said] cargo.]

(b) And that the said vessel (and her said cargo) may be condemned and sold to pay the same.

No. 42. (d)

All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

Wherefore, he prays that a warrant of arrest or other proper process, according to the course of this honorable Court in causes of admiralty and mari-

time jurisdiction, may issue against the said XY, master, and VW, chief mate of the said ship "Z," and that they and each of them be required to answer all and singular the matters aforesaid; and that the Court will be pleased to pronounce for the matters aforesaid with costs, and will give to libelant such other and further relief as in law and justice he may be entitled to receive.

No. 42. (e)

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court, and that the said (describe cargo) are now in the port of ————.

Wherefore, the libelants pray that process of attachment in due form of law, according to the course of this honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said (cargo), and that the said (consignee) and all other persons having or pretending to have any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honorable Court will pronounce for the (nature of claim, e. g., demurrage, or freight, or "money due on bond", etc.), claimed as aforesaid with costs, and that the said (cargo) may be condemned and sold to pay the same; and that the Court will grant to libelants such other and further relief as in law and justice they may be entitled to receive.

Section IV.

LIBELS.

No. 43.

Libels for General Average. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of AB, of ————, owner of the bark "Margaretha," of Dantzig, Russia, of the burden of five hundred and twenty-seven registered tons, whereof XY is master, against the Z company, of Philadelphia, a corporation under the laws of the State of Pennsylvania, in a cause of general average contribution, civil and maritime, alleges as follows:

I.

That on the —— day of ——, 18——, the said bark "Margaretha" sailed from Pillau with a cargo of old rails and rags, bound for Philadelphia, well equipped, staunch and strong, and in every particular completely seaworthy, commanded by M, a competent and skillful seaman and navigator.

II.

That the said cargo of rags was owned by the said Z Company and was being carried by the said bark for them and at their request, they paying freight to the said bark therefor.

III.

That on the twentieth day of June then following, at 12:30 o'clock, a squall was seen coming down from the southwest; the fore and maintop-gallants and

spanker were instantly clewed up and the flying jib hauled down. By that time the squall was on with rain; the jib boom and foremast head snapped and carried away the maintop-gallant mast; all the spars fell over the ship's side to leeward with their respective sails, yards, etc., and as they were held together by their rigging and floating in the water by the vessel's side, being secured to the bark itself by the running and standing rigging, the said spars commenced to pound heavily against her in the heavy seaway; the jib boom also chafed and plunged into and against the bows of the vessel; the vessel and cargo were in imminent peril of being lost by the pounding of the spars, and after consultation, the said master cut away all the said valuable spars, sails, and rigging, and cast them adrift from the vessel, in order to save the vessel and cargo. By 5 o'clock, P. M. all the spars, sails, and rigging which had fallen and were secured as aforesaid had been cast and cut clear of the bark, and, drifting off to leeward, were lost sight of.

IV.

That immediately upon the cutting away of said masts, sails, and rigging, the common danger which threatened the cargo, vessel, and the lives of the crew, and which was imminent and apparently inevitable, was thereby avoided, and the result of such cutting away was the saving of the cargo, vessel, and lives of the crew from destruction.

V.

That when the foregoing sacrifice was made, the position of the vessel was in latitude 42 degrees and 25 minutes north, and in longitude 57 degrees and 37 minutes west.

VI.

That the master of the bark, being the common agent of all concerned, acted in good faith, and with discretion, and, with the sole view of averting the common danger, in cutting away the said masts, sails, and rigging, voluntarily sacrificing thereby for the common benefit valuable property which could have been saved but for the peril surrounding the vessel at the time.

VII.

That on the sixth of August following the said bark came to anchor in Halifax harbor.

VIII.

That while the said bark lay at Halifax, she expended large amounts of money in the payment of towage, in the purchase of new spars, sails, and rigging to supply the places of the spars, sails, and rigging sacrificed as foresaid, and for other and various expenses incurred for the benefit of all concerned, and that after referring the adjustment of the contribution which each consignee and interested person is liable to pay the vessel in order to average the loss to competent and skillful adjusters, to wit, to D H & G, the said adjustment, after allowing all and various credits, was presented to the said Z, and the amount of its contribution so adjusted, to wit, the sum of two thousand and seventy-eight dollars and twelve cents, was thereupon demanded by Messrs. F. R., agents for libelant, but the said Z thereupon refused to pay the same.

IX.

(Conclusion from No. 42 a, the relief sought being "the general average contribution.")

(a) From Pugh's Admiralty Forms.

No. 44.

Libel on Bottomry Bond. (a)

[Title of Court and Cause.]

(Commencement, Form No. 41 c.)

I.

That on the —— day of ——, 18—, Z, the owner of the steamship "————," of the burden of —— tons or thereabouts, was indebted to this libelant in a large sum of money theretofore advanced to him for the use of said steamship, and which said money was then and there secured by a bottomry and hypothecation of said steamship.

That the said steamship was then lying in the port of ————, and was bound from thence on a voyage to ————, and thence back to the port of ————, and the said owner thereof then and there, standing in need of further advances of money for the purpose of repairing, refitting, and paying other expenses connected with the business of said ship in order to enable her to go to sea and perform the aforesaid contemplated voyage, borrowed from the libelant for the use of said steamer further sums of money, which together with the sum theretofore advanced as aforesaid amounted in the aggregate to the sum of $——, upon a new and further bottomry and hypothecation of the said steamer, the first bottomry bond hereinbefore mentioned being thereupon canceled, and the said sum was advanced and paid by this libelant accordingly.

II.

That in consideration of the said advances and in fulfillment of the agreement of bottomry and

hypothecation as aforesaid, he, the said Z. owner of said steamer as aforesaid, did by a certain bond or instrument of bottomry and hypothecation, a copy whereof is hereto annexed, bearing date at ————, the —— day of ——, 18—, by him duly signed and executed, by and through his attorney in fact, R. thereunto expressly authorized, in the presence of two credible witnesses who have subscribed their names thereto as witnesses of the due execution thereof, bind the said steamer, her tackle, apparel, and furniture, for the same as security for the payment of the sum of $——, so advanced and thereafter to be advanced for the use of the said steamer, and the said owner then and there agreed to pay to the said libelant the sum of $——, with maritime interest at the rate of 8 per cent per annum from the said —— day of ——, 18—, within ten days after the arrival of the said steamer in the port of ————, on the completion of her said voyage, and that the said risk should continue as to the sum of $—— until the final determination, adjudication, and settlement of the cases of ————, then and there pending in the District Court of the United States in and for the District of ————, and the said owner did further agree in and by said bond that the said steamer, her tackle, apparel, and furniture, should be at all times liable and chargeable with the payment of the said sum until the payment thereof.

III.

That thereafter said steamer proceeded upon her voyage to ———— and returned to the port of ————, where she arrived on the —— day of ——, 18—.

IV.

That the said libelant has not received the aforesaid sum of $——, or any part thereof, though more than ten days have elapsed since the return of said vessel, and the same, together with the interest thereon, amounting to the sum of $——, is due and has been demanded from R, as the attorney in fact of the said owner, and the said bottomry and hypothecation remain entirely unsatisfied, to the great damage of the libelant.

V.

That the said steamer "————" is now lying in the harbor of ————, within the —— district of ————.

VI.

(Conclusion, Form No. 42 b.)

ANDROS & FRANK,
Proctors for libelant.

(For form of bottomry bond, see No. 123.)

(a) The Sirius, 54 Fed. Rep. 188; 7 U. S. App. 660; see Desty's Fed. Proc., sec. 52.

No. 45.

Libel in Respondentia.

[Title of Court and Cause.]

To the Honorable, etc.

The libel and complaint of AB. of ————, against three thousand eight hundred and twenty barrels of flour lately laden on board the bark "Kaiwoon," in a cause of contract upon respondentia bond, civil and maritime, showeth:

I.

That on or about the thirteenth day of January, 1878, the said bark "Kaiwoon," whereof XY was master, having met with heavy weather whereby she sustained great damage on her voyage from San Francisco to New York with the said cargo of flour on board, put into the port of Bahia in distress. A survey was held upon the vessel and she was condemned to be sold as unseaworthy and unable to complete her voyage. Thereupon the said vessel was sold and the cargo landed and stored.

II.

The said vessel sold for a sum sufficient only to pay the costs and expenses of her sale, and the master, being without means or credit in ————, applied to the libelant and to other persons for a loan of money in order to enable him to trans-ship the cargo to New York. The master had theretofore communicated with the owners, who reside in San Francisco, California, and also with the owners of the cargo, who reside in New York, but they had refused or neglected to furnish him with any funds.

III.

That libelant advanced to the master, for the purpose aforesaid, the sum of four thousand eight hundred dollars, at an interest or maritime premium of fourteen per cent, for the voyage to New York, and thereupon the said master executed and delivered to the libelant a bond in respondentia of the said cargo as security for the loan, a copy whereof is hereto annexed, marked "F," and made part of this libel.

IV.

The cargo was laden upon the ship "Esmeralda" on or about February 4, 1878, and it safely arrived in New York, where it now is.

V.

Libelant has demanded of the said master and of the consignees of the flour, Messrs VW & Co., the sum due him upon the bond, but they have refused to pay the same, and there remains due him the sum of $——, which is his claim in this case.

VI.

(Conclusion, see Form No. 42 e.)

(For form of bond in respondentia, see No. 124.)

See Desty's Fed. Proc., sec. 52.

No. 46.

Libel in Personam—Charter-party. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of AB, master and part owner and agent of the brig "Josephus," of ————, against Z, of ————, etc., in a cause of contract, civil and maritime, alleges:

I.

That sometime in the month of March, 1845, the said brig being then in the port of New York, the said libelant made and concluded with the respondent a charter-party (a copy of which is hereto annexed and to which the libelant craves leave to refer), bearing date the tenth day of March, in the year aforesaid, by which the libelant, for and in consideration of the covenants and agreements thereinaf-

ter mentioned, to be kept and performed by the said respondent, did covenant and agree on the freighting and chartering of the said brig unto the said respondent for a voyage from the port of New York to Antigua, La Guayra, and Puerto Cabello and back to New York, on the terms in the said charter-party mentioned, that is to say: 1st. The said libelant engaged that the said brig, in and during the said voyage, should be kept tight, staunch, well-fitted, tackled, and provided with every requisite and with men and provisions for such voyage; 2nd. The said libelant engaged that the whole of the said brig (with the exception of the cabin and the necessary room for the accommodation of the crew and the stowage of the sails, cables, and provisions) should be at the sole use and disposal of the said respondent during the voyage aforesaid, and that no goods or merchandise whatever should be laden on board otherwise than for the respondent or his agent without his consent on pain of forfeiture of the amount of freight agreed upon for the same; 3d. The libelant further engaged to take and receive on board the said brig during the aforesaid voyage all such lawful goods and merchandise as the said respondent or his agent might think proper to ship.

II.

That it was, among other things, by the said charter-party covenanted and agreed that the said respondent, for and in consideration of the covenants and agreements to be kept and performed by the said libelant, chartered and hired the said brig on the terms following therein mentioned, to wit: 1st. The said respondent engaged to provide and furnish to the said brig the necessary cargoes or ballast for her lading at the several ports aforesaid; 2nd.

The said respondent further engaged to pay to the said libelant or his agent for the charter or freight of the said brig during the voyage aforesaid in the manner therein following, that is to say: Five hundred and ten dollars per calendar month for each and every month and pro rata for any unexpired month that said vessel might be employed, payable in current money of the United States; also to pay all the brig's foreign port charges, lighterage, and pilotage. The master to have what money he might require in foreign ports for disbursements, and the balance payable on discharge of the cargo in New York.

III.

That afterward, to wit, on the twentieth day of March, in the year aforesaid, at the said port of New York, the said brig being then and there tight, staunch, well-fitted, tackled and provided with every requisite and with men and provisions necessary for such a voyage as in the said charter-party mentioned, the said libelant and XY, master of the brig aforesaid, loaded and received on board of said brig a full cargo of lawful goods, with which the master immediately set sail and proceeded to the port of Antigua aforesaid, where being afterward, on the third day of April, in the year aforesaid, arrived, the said master then and there made a delivery of such part of said cargo as was destined for Antigua aforesaid to the agents or consignees of the said respondent.

IV.

That the said master afterward, towit, on the twelfth day of April, in the year aforesaid, set sail and proceeded from the said port of Antigua to the port of La Guyara aforesaid, where being afterward

arrived, towit, on the sixteenth day of April, in the year aforesaid, the said master then and there made a delivery of such part of said cargo as was destined to La Guyara aforesaid, and also took, loaded, and received on board of said brig five hundred bags of coffee, to be conveyed to New York.

V.

That the said master afterward, towit, on the twenty-fifth day of April, in the year aforesaid, set sail and proceeded to the port of Puerto Cabello aforesaid, where being afterward, to wit, on the twenty-sixth day of April, in the year aforesaid, arrived, the said master then and there made a delivery of the articles and residue of the said outward cargo, and afterward, to wit on the sixth day of May, in the year aforesaid, at Puerto Cabello aforesaid, took on board said brig a further cargo of lawful goods, with which the said master set sail, and proceeded to the port of New York aforesaid, where he afterward, to wit, on the twenty-second day of May, in 1845, arrived and delivered the said homeward cargo to the said respondent or his agents at said port.

VI.

That the libelant has always since the making of said charter-party well and truly performed and kept all and singular the covenants and undertakings on his part according to the said charter-party to be performed and kept, but the said respondent has not well and truly performed and kept all and singular the covenants and undertakings on his part according to the said charter-party to be performed and kept, as is hereinafter more particularly propounded.

VII.

That on the discharge of the said homeward cargo at the port of New York aforesaid, the sum of twelve hundred and forty-one dollars and upward for freight, foreign port charges, lighterage, and pilotage (after deducting $—— received by said master in foreign ports for disbursements) became and was due and payable from the said respondent to the said libelant according to the said charter-party, and the agreement of the said respondent, as is alleged in the second article of this libel.

VIII.

That the said respondent has paid to the libelant the sum of six hundred and forty-one dollars on account of the said charter and no more, and has not paid a balance of six hundred dollars due thereon from the respondent to the libelant on discharge of the said cargo at the said port of New York, although often requested thereto, and now utterly neglects and refuses so to do, to the damage of said libelant, the full sum of seven hundred and twenty-five dollars and upward.

(Conclusion, see Form No. 42 a.)

(a) From Benedict's Admiralty; see Desty's Fed. Proc., sec. 52.

No. 47.

Libel on Charter-party against Charterers Refusing to take Vessel. (a)

[Title of Court and Cause.]

The libel of The Galgate Ship Company, a corporation, against Starr & Company, a corporation, in a cause of contract, civil and maritime, alleges:

I.

At all the times hereinafter mentioned the libelant was and now is a corporation, organized and existing under the laws of the United Kingdom of Great Britain and Ireland. That at all of said times it was the owner of the ship "Galgate" and engaged in the business of transportation of merchandise in and by the said ship. At all of said times the respondent Z Company was and now is a corporation, organized and existing under the laws of the State of California and engaged in the business, among other things, of buying and selling wheat, and chartering vessels for the transportation thereof.

II.

On or about the —— day of ——, 18——, at Liverpool, England, Messrs. John Joyce & Company, agents for the owner of the said ship "Galgate," as such agents made and entered into an agreement of charter-party in writing, with Starr & Co., the respondents herein, by Balfour, Williamson & Company, of Liverpool, as agents and under authority of Starr & Co., for the charter of said ship "Galgate," which was then bound on a voyage from New York to Melbourne, and thence to San Francisco, a copy of which charter-party hereunto annexed is hereby referred to and made a part of this libel.

III.

The said ship "Galgate," in pursuit of the voyage on which she was engaged at the date of the making of said charter-party, arrived at the port of San Francisco on the —— day of ——, 18——, notice whereof in writing was given to Starr & Co., by Messrs. Balfour, Guthrie & Co., who are the agents for the owner of the said ship.

On the ——day of ——, 18——, the inward cargo of said vessel having been so far discharged as to make stiffening necessary to enable her to complete the discharge thereof, the master of said vessel notified Starr & Co., charterers as aforesaid, of said facts in writing, stating the amount of stiffening required, and accompanying the said notice with a certificate of Captain John Metcalfe, a competent surveyor resident at said port, stating that the said vessel was ready to take in said stiffening; and the said master in and by said notice requested the charterers to send to said ship a surveyor employed or selected by themselves to make the re-examination and report of the condition of the vessel as provided in said charter-party.

IV.

On the —— day of ——, 18——, Starr & Co. notified the master of said ship, in answer to his said notice, in writing, referred to in the foregoing paragraph of this libel, that the said ship was not under charter to them and that they would not stiffen or load her.

V.

At the time of said refusal of said charterers to carry out the obligations of the charter-party entered into by them, the rates of charter for ships of the size and position with reference to loading of the said ship "Galgate," and for the voyage named in the said charter-party, had fallen in the market of the port of San Francisco to —— per ton, equivalent to $—— per ton in gold coin of the United States, at which rate only, if at any rate, employment of the said vessel could be had by the owners thereof.

VI.

The carrying capacity of said "Galgate" for the voyage mentioned and agreed upon in said charter-

party was three thousand five hundred tons, and the amount therein provided to be received by the libelant for the carriage of a cargo by said vessel was at the rate of ——— per ton, the sum of seven thousand pounds sterling, or thirty-four thousand and twenty dollars in United States gold coin. The highest amount obtainable by the owner of said ship after the repudiation of said charter-party, viz., ———, was the sum of two thousand eight hundred and forty-three pounds and fifteen shillings or thirteen thousand eight hundred and twenty dollars and sixty-two cents in gold coin of the United States.

The actual loss caused to the libelant by reason of the said breach of charter-party on the part of Starr & Co. was and is the sum of four thousand one hundred and fifty-six pounds and five shillings sterling, or twenty thousand one hundred and ninety-nine dollars and thirty-eight cents, gold coin of the United States, in which sum the libelant has been damaged.

VII.

The libelant was at all the times hereinbefore mentioned ready and willing to carry out in every respect the obigations of said charter-party imposed upon it, and did in fact carry out each and every thereof so far as it was permitted so to do by the respondent.

VIII.

(Conclusion, Form No. 42 a.)

PAGE & EELLS,
ANDROS & FRANK,
Proctors for Libelant.

(a) Starr & Co. v. Galgate Ship Co. Ld., 58 Fed. Rep. 894; 29 U. S. App. 599; Desty's Fed. Proc., sec. 52.

No. 48.

Libel for Demurrage (a).

District Court of the United States of America for the Northern District of California.

GEORGE McLEOD,
Libelant,
vs.
SIXTEEN HUNDRED TONS OF NITRATE OF SODA in Bags, Cargo of the ship "Dunstaffnage."

To the Honorable, etc.

The libel of George McLeod against sixteen hundred tons of nitrate of soda in bags, cargo of the ship "Dunstaffnage" and all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges:

I.

That at all the times hereinafter mentioned said libelant was the sole owner of the British bark "Dunstaffnage," a vessel of eight hundred and forty-nine tons or thereabouts, register measurement.

II.

That on or about the sixteenth day of September, 1890, Scammel Bros. of New York, then and there acting as agents for and on behalf of this libelant, entered into a charter-party with Messrs. I. W. Grace & Co. of San Francisco, a copy of which is hereto annexed and made a part of this libel, bearing date the sixteenth day of September, 1890, by which the said libelant, in consideration of the covenants and

agreements hereinafter mentioned, to be kept and performed by the said charterers, did covenant and agree on the freighting and chartering of said bark unto the said charterers for a voyage from a safe nitrate port as ordered by charterers or their agents to San Francisco, California, direct, to discharge at any safe berth or anchorage in San Francisco bay, as charterers may direct: (loading port to be named by charterers at last named port at which vessel discharges lumber) for the charter money and on the terms and conditions mentioned in said charter-party.

III.

That among other things it was in said charter-party agreed between the libelant and the said charterers that the charterers should have thirty working lay days for loading said bark at the port of loading, and, in case the vessel should be longer detained, the said charterers agreed to pay the said libelant demurrage at the rate of four pence sterling per ton register per day for each and every day so detained, provided such detention was by default of said charterers or their agents; and it was further agreed in and by said charter-party that the charterer's liability should cease on completion of loading and that the vessel should have a lien on the cargo for all freight, dead freight and demurrage which might become due under said charter-party.

IV.

That thereafter the said bark, having fully discharged her cargo at Autofogasta, in the republic of Chile, and having duly notified the charterers thereof, the said charterers then and there named the port of Caleta Buena, in the republic of Chile, as

the loading port, and then and there requested the master of said bark to repair to said last-named port for his cargo. That thereupon the said master did repair with said bark to said port of Caleta Buena as directed, where he arrived on the afternoon of the ninth day of February, 1891, being then and there without cargo and unnecessary ballast; and the master then and there duly notified said charterers that said vessel was ready to proceed with the loading as per said charter-party.

V.

That at the time of the arrival of the said vessel at said port of Caleta Buena the said port was under a blockade declared by the Chilean government, but that thereafter, towit, on the fifteenth day of February, 1891, the said blockade was raised and the said port was declared open and the shipment of nitrate authorized therefrom, whereupon the said master again demanded of said charterers to furnish him with a cargo as per said charter-party.

VI.

That thereafter, the said charterers commenced to furnish said vessel with a cargo of nitrate, but notwithstanding that said bark was from the said ninth day of February, 1891, at the direction and disposal of said charterers, and notwithstanding there was no fault or remissness on the part of the said libelant, the said charterers, by their own default, did not load the said bark and give her dispatch from the said port of Caleta Buena within thirty days, but delayed her, contrary to the terms of said charter-party, until the twenty-third day of April, 1891; and thereafter, on April 28, said vessel sailed, and the said

libelant became thereby entitled to demand from said charterers demurrage for twenty-eight days at the rate of four pence sterling per ton per day, amounting to the sum of nineteen hundred and twenty-seven dollars and thirty-seven cents, or thereabouts.

VIII.

That said vessel well and faithfully performed said voyage, but notwithstanding said charterers have been frequently requested to pay the said sum of nineteen hundred and twenty-seven dollars and thirty-seven cents, the demurrage aforesaid, they have have refusal and still refuse so to do.

VII.

(Conclusion, Form No. 42 e) (prayer) "that this honorable Court will be pleased to decree the payment of the amount aforesaid, with costs and interest; that said sixteen hundred tons of nitrate of soda in bags be condemned, etc."

GEORGE McLEOD,
ANDROS & FRANK,
Proctors for Libelant.

(a) Sixteen Hundred Tons Nitrate of Soda, 55 Fed. Rep. 528; 15 U. S. App. 369; see Desty's Fed. Proc., sec. 52, p. 189.

No. 49.

Libel for Demurrage—Detention in Loading. (a)

[Title of Court.]

The Ship "ALEX GIBSON," Her Tackle, etc., THE PORTLAND SHIPPING CO., Libelant.

To the Honorable, etc.

The Portland Shipping Co. brings this its libel in a cause, civil and maritime, of contract and damage against the ship "Alex. Gibson," her tackle, apparel, furniture, and freight, and articulates and alleges as follows:

I.

During all the times hereinaf(ter mentioned the libelant was and still is a corporation, duly organized and operated under the laws of Oregon, with its principal place of business in the city of Portland, State of Oregon, and whereof Wm. S. Gibson was and is president. The ship "Alex. Gibson" was and is an American ship of Thomaston, Maine, of two thousand seven hundred and twenty-one tons measurement, whereof J. R. Speed was and is master, and Edward O'Brien was and is sole owner, and said ship is now lying at Port Townsend, Washington Territory.

II.

Heretofore, towit, on December 3, 1887, the libelant, at Portland, Oregon, entered into a contract of affreightment with the owners of the ship "Alex. Gibson," by a charter-party duly executed and delivered,

wherein and whereby it was mutually agreed and provided, amongst other things, that the whole of said ship, except the deck, cabin, and necessary room for the crew and stowage of provisions or cables, said ship being then lying at Tacoma, W. T., was chartered to libelant to carry a full and complete cargo of wheat to be received on board said ship at Tacoma, W. T., and carried to a direct port or to Queenstown or to Falmouth, in the United Kingdom, for orders, and, after being so loaded said ship was to await the orders of libelant at Tacoma, W. T., and that in loading said wheat the said ship should employ stevedores nominated by said libelant and satisfactory to libelant, provided that the charge should not exceed that current at the time in Tacoma, W. T., for competent stevedoring, and cargo to be stowed under the captain's supervision and direction.

And that for loading and awaiting orders at Tacoma, W. T., the libelant should have thirty working days (rainy days not to be counted as lay days), in which no cargo or cost for demurrage should be claimed or allowed against libelant. Said lay days to begin to run only twenty-four hours after the inward cargo or ballast had been discharged and the ship made ready to receive said wheat, and the libelant had been given written notice by the master that his ship was so ready. And that bills of lading were to be duly and properly signed and delivered to the libelant, and certificate of surveyor furnished libelant.

As to good stowage, demurrage, general condition, and draught of water, said bills of lading and certificate to be delivered by the master to libelants at Tacoma, W. T., before the departure of the vessel from said port of loading. Loading not to commence before December 15, 1887, except to charterer's option

and various other covenants and agreements material to this libel and in said charter-party contained, a true copy whereof, and of the whole thereof, is hereto appended and referred to and made a part of this libel. That said ship and its owner was and is, by the terms of said charter-party, expressly bound to the true and faithful performance of each and every of the aforesaid agreements and of every part of such charter-party, on stipulated damages in the sum of twenty-seven thousand five hundred dollars.

III.

That after the execution of the charter-party aforesaid, to wit, on December 12, 1887, said master gave libelants notice that he would be able to take on stiffening on December 14. And thereafter, as soon as he was ready, to wit, on December 14, libelant promptly tendered to said master and ship all the wheat needed, either for stiffening or cargo; said ship was at this time alongside of, and said wheat was on, the dock of the Tacoma Dock & Warehouse Co., at Tacoma, W. T. Said master, without cause, refused to accept said wheat, or any wheat from libelant, and willfully persisted to refuse to take or load any wheat on said ship, or to comply with the terms of the charter-party aforesaid, and took said ship away from said dock, and persisted and continued in said refusal for a month, from December 5, 1887, to January 5, 1888, all of which was in violation and breach of the charter-party aforesaid.

Said master alleged and maintained during the entire period last aforesaid, his determination to employ as stevedores, and to load the wheat of libelants aboard said ship by the means and services of certain stevedores of Tacoma, W. T., to wit, Messrs De Lion and Walker, operating under the name and style of

the Stevedores' Co-operating Union. Said stevedores were and are incompetent, unskilled, and irresponsible, and very unsatisfactory to the libelant.

Libelant promptly notified said master that the stevedores employed by him as aforesaid were unsatisfactory to libelant for good and sufficient reason, as aforesaid, and nominated to said master as stevedores to handle and stow said wheat on said ship Messrs. Cunningham and Mullins, the only other persons in Tacoma engaged in the stevedoring business, and satisfactory to charterers. Said Cunningham and Mullins, towit, from December 5, 1887, to January 5, 1888, tendered their services as stevedores as aforesaid to said master, and offered to load and stow said cargo under the supervision and direction of said master, and at the rate current at the time in Tacoma, towit, thirty-two and one-half cents per ton, all of which proffers of service said master refused as aforesaid.

Said master was duly warned and notified by libelant that in creating such delay he had acted at his peril, and libelant would hold all parties responsible for all damages resulting from such delay. That, nevertheless, said master persisted in his neglect and opposition, and refused to comply with said charter-party as aforesaid until January 5, 1888, when he accepted said Cunningham and Mullins as stevedores, to begin work at once.

IV.

Libelant has never received any notice whatever from said master as to when his ballast and inward cargo was or would finally be discharged, and said ballast was not discharged, nor said ship ready to receive cargo under the charter-party aforesaid, until the afternoon of January 12, 1888.

Thereafter, and within the next thirty days, there were six very stormy and rainy days, not Sundays, to wit, January 17, 18, 19, 1888, and the lay days to which libelant is entitled under the charter and of giving notice by the master as therein prescribed would not have expired until February 24, 1888; nevertheless said master, in defiance of the orders of the libelant, and against libelant's urgent protest, and without any sailing orders from libelant, removed said ship from the port of Tacoma, Washington Territory, to Port Townsend, Washington Territory, on February 16, 1888, in violation of said charter-party.

V.

That said master removed said ship, as last hereinbefore articulated, without requiring bills of lading for said cargo or any part thereof, and without furnishing any certificate of survey, as in said charter-party provided, and said master refused to sign any bills of lading, and so persisted until W. S. Gibson, president of the Portland Shipping Co., personally went to Tacoma, Washington Territory, to procure the same to be signed, when, on February 20, 1888, the master signed said bills of lading.

VI.

That there was loaded into, and now is on said ship, a cargo as aforesaid, to wit, 3039.258—2240 tons good merchantable Walla Walla, Palouse wheat, of 2240 pounds to the ton, which loading was completed February 16, 1888.

VII.

The selling market price for said wheat, for the shipment, to be made not later than January 31, 1888, was 34 s. 6 d. sterling per quarter of five hundred

pounds; that prior to January 5, 1888, the market had declined 1 s. 6 d. sterling per quarter, and now is still lower; that said wheat had been bought by libelant and held ready for shipment from the time of her charter.

VIII.

By reason of the gross and willful violation of said charter-party, as hereinbefore articulated, especially as set forth in articles II and IV of this libel, libelant was unable to enter into any contract of sale, or any contract for any delivery of any cargo by said ship "Alex. Gibson," whereby libelant is damaged as follows:

By law of profit and decline in price of wheat as aforesaid, to wit in the sum of $5,100
By law of interest on the value of said cargo, at 10 per cent per annum..... 100
By premium for fire insurance during thirty days said wheat was unnecessarily held and delayed..... 140

And by reason of the aforesaid conduct of said master, and breaches of said charter-party, especially as set forth in articles III, IV, and V of said libel, libelant was obliged to and did employ legal counsel, and sent its manager and president, together with its attorneys, to Tacoma and Seattle, Washington Territory, wherefore libelant is damaged as follows:

By counsel's fee as aforesaid $500
By costs and expenses of travel, loss of time, and disturbance to libelant's business..... 500

and there is due and owing to libelant from the owner of said ship, by reason of the breaches of said charter-party, hereinbefore set forth, stipulated damages in the sum of $27,500.

IX.

(Conclusion. See Form No. 42 b.)

(a) Portland Shipping Co. v. The "Alexander Gibson," 44 Fed. Rep. 371; 15 U. S. App. 155; see Desty's Fed. Proc., sec. 52, p. 189.

No. 50.

Libel for Collision. (a)

(General Scheme of Libel.)

Commencement.

1. The names of the colliding vessels, and the names of their masters.

2. The time of the collision.

3. The place of the collision.

4. The direction of the wind.

5. The state of the weather.

6. The state and force of the tide.

7. The depth of the water (if important).

8. The course and speed of libelant's vessel when the other was first seen.

9. The lights, if any, carried by libelant's vessel.

10. The distance and bearing of the other vessel when first seen.

11. The lights, if any, carried by her.

12. Whether any lights of the other vessel, other than those first seen, came into view before the collision.

13. What measures were taken, and when, to avoid the collision.

14. The parts of each vessel which first came into contact.

15. What mistakes were made by the other vessel, and in what respect they contributed to or caused the collision.

16. What injury was done to the libelant's vessel.

17. The amount of damages claimed.

(a) From Pugh's Admiralty Forms; see Desty's Fed. Proc., sec. 52.

No. 51.

Libel in Rem, Damages by Collision. (a)
(Steam and Steam.)

[Title of Court and Cause.]

To the Honorable ————, Judge of the District Court of the United States for the District of ——— ———.

The libel of Jacob Nelson, a citizen and resident of Tacoma, Pierce county, Washington, against the steamer "Premier," whereof ——— Gilroy was and is master, her engines, boilers, tackle, apparel and furniture, and all persons intervening for their interest therein, and whereof libelant is informed and believes that one———— Spencer, a citizen of Portland, Oregon, is and was, at the time of the collision hereinafter set forth, owner, and against the steamship or collier "Willamette," whereof C. K. Hansen was and is master, her engines, boiler, tackle, apparel, and furniture and all persons intervening for their interest therein whereof libelant is informed and believes that the Oregon Improvement Company, a foreign corporation organized under the laws of the State of Oregon, are the owners and were so at the time of the collision hereafter set forth, alleges:

I.

That on the eighth day of October, 1892, the libelant took passage on the aforesaid steamer "Premier," for the city of Port Townsend, bound for the city of Tacoma, the destination of libelant, having paid for his passage thereon from said city of Port Townsend to said city of Tacoma, all within the boundaries of the State of Washington, he having purchased a first-class ticket entitling him to passage upon said steamer from the said city of Port Townsend to said city of Tacoma.

II.

That said steamer "Premier" left the said city of Port Townsend about 1:35 o'clock P. M. on said eighth day of October, 1892, libelant being on board of said steamer.

III.

Libelant further alleges on information and belief that on the said eighth day of October said steamship or collier "Willamette" left the city of Seattle in the State of Washington for the city of San Francisco, in the State of California.

IV.

That while upon the voyage of said steamer "Premier," upon navigable waters of Puget Sound, about eight or ten miles southerly from said city of Port Townsend, between two and four o'clock in the afternoon of said eighth day of October, 1892, said steamer "Premier" came into collision with said steamship or collier "Willamette," whereof C. K. Hansen was and is master and commander; that through, by and in consequence of said collision, this libelant had two of his ribs broken on the left side of his body, and his

left arm severely injured; also his left leg, and was also injured internally, all of which injuries this libelant is informed and believes will be permanent; that by reason of such injuries this libelant has suffered greatly in both body and mind, and that the physical suffering, through pain and anguish, has been and is intense.

V.

That by reason of said injuries this libelant has been compelled to incur, and has incurred great expense in, securing medical and surgical aid, to wit, in the sum of $100.

VI.

That this libelant, just prior to the injuries received as herein alleged, was in perfect physical condition and health and was able to perform and did perform, daily labor for long time prior to said accident, which brought him the sum of $2.25 per day; that he believes that he will never be able again and on account of said injuries, to earn his living by daily labor; that he has a wife and one minor child who are dependent upon him for their maintenance and support.

VII.

That at the time said collision occurred, and at the place where said collision occurred, said steamer "Premier" and said steamship or collier "Willamette" were both and each running at a high rate of speed, and at the same time they were both and each passing through a fog; that, owing to the high rate of speed at which each of said vessels was running, and, as the libelant is informed and believes, through the careless and negligent manner in which the officers and crew of said "Premier" managed said "Premier," (and the said officers and crew or those

who were on the watch were either negligent in not discovering said steamship or collier in time to avoid such collision, or, in seeing said steamship or collier "Willamette, were grossly negligent in not causing said steamboat to be stopped before colliding, or causing her course to be changed), and through the careless and negligent manner in which the officers and crew of said steamship or collier "Willamette" was managed, (and the officers and crew of said steamship or collier "Willamette," or those who were on the watch, were either negligent in not discovering said steamer "Premier" in time to avoid such collision, or, seeing said steamer "Premier," were grossly negligent in not causing said steamship or collier "Willamette" to be stopped before colliding, or causing her course to be changed); that said accident or collision occurred causing the injuries to this libelant, although libelant at the same time was exercising due and proper care, and without any fault or negligence on his part.

VIII.

That prior to the commencement of this action this libelant made a demand upon the master of the said steamer "Premier" and the master of the said steamship or collier "Willamette," and upon the owners of said vessels, and each of them, for the sum of $5,000, all of which said masters and owners of said vessels refused to pay, or any part thereof.

IX.

That at the time of filing this libel, to wit, on the twenty-fifth day of October, 1892, the respondents, and each of them, the steamer "Premier" and the steamship or collier "Willamette," were in the waters of Puget Sound, within the jurisdiction of this Court and the boundaries of the State of Washington.

X.

(Conclusion, Form No. 42 b.)

(a) The "Willamette," 59 Fed. Rep. 797; 44 U. S. App. 26-96; see Desty's Fed. Proc., sec. 52.

No. 52.

Libel in Personam, Damages by Collision. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of Eliza A. Smith, a resident of————, against the Occidental & Oriental Steamship Company, a corporation, and Pacific Coast Steamship Company, a corporation, and alleges:

I.

That the respondent Occidental & Oriental Steamship Company is a corporation duly organized and incorporated for the purpose of, and was at all the times herein mentioned, and still is, conducting business as a common carrier, engaged as such in running steamships and carrying passengers thereon, for hire between the port of San Francisco in California, and other ports of the Pacific ocean, and at all the times herein mentioned was, and still is, the proprietor of a certain steamship named the "Oceanic," which was and is employed by said respondent in making voyages carrying passengers between San Francisco and Yokohama.

II.

(Similar allegation as to the Pacific Coast Steamship Company,) and that, up to the time of the sinking and loss of such steamship, on August 22, 1888, as

hereinafter set forth, was the proprietor of a certain steamship named the "City of Chester," which was employed by said respondent in making voyages, carrying passengers for hire on the Pacific ocean between San Francisco and Eureka, California.

III.

That, on the 22nd day of August, 1888, at San Francisco, California, the respondent Pacific Coast Steamship Company received M. E. Smith aboard its said steamship "City of Chester," for the purpose of, and under a contract for, conveying her, the said M. E. Smith, as a passenger on said steamship from San Francisco to Eureka, California, for the price charged by said respondent therefor, and which price for such passage was, on behalf of said M. E. Smith, fully paid to said respondent in advance.

IV.

That respondents herein, on said 22nd day of August, 1888, so negligently, unskillfully and wrongfully conducted themselves, and so misbehaved in the management of their respective steamships, the "Oceanic" and the "City of Chester," that, through the gross negligence, unskillfulness and wrongful acts of respondents, their respective agents, servants and employees, said two steamships, the "Oceanic" and the "City of Chester," were caused to collide and strike together at or near the entrance to the harbor of San Francisco, and within less than three miles from the shore, and thereby and through the gross negligence, unskillfulness and wrongful acts of respondents, their respective agents, servants and employees, said steamship the "City of Chester" was caused immediately to sink beneath the waters and

was wholly lost, and the said M. E. Smith, who was as aforesaid a passenger on board said steamship, was carried down with said steamship beneath the waters, and thereby, and without any fault or negligence on her part, or on the part of libelant, but solely through the gross negligence, unskillfulness and wrongful acts of the respondents, their respective agents, servants and employees, the said M. E. Smith was drowned and deprived of her life.

V.

That said M. E. Smith was at the time of her death an infant of the age of about five years.

That the father of the said M. E. Smith was Henry Smith, and he was also at same time a passenger on said steamship the "City of Chester" and lost his life at the same time in the same manner, and under the same circumstances as did said M. E. Smith. That said M. E. Smith was the daughter of the libelant, and, by reason of her death, caused, as aforesaid, by the negligent, unskillful and wrongful acts of respondents, libelant has been damaged in the full sum of $20,000.

VI.

(Conclusion, Form No. 42 a, asking for damages, $20,000.)

(a) Smith's Administrator v. Occidental & Oriental S. S. Co., et al., 61 Fed. Rep. 338; 44 U. S. App. 353; see Desty's Fed. Proc., sec. 52.

No. 53.

Libel in Rem—Collision. (a)

(Steamer and Bark, at Night.)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of the Pacific Coast Steamship Company, owner of the American steamship "State of California," against the American barkentine "Portland," her tackle, apparel, boats and furniture and against all persons lawfully intervening for their interests in the same, in a cause of collision, civil and maritime, allege as follows:

I.

That at all the times herein mentioned, the libelant, the Pacific Coast Steamship Company, was a corporation duly incorporated, organized and doing business under the laws of the State of California, and under the corporate name of Pacific Coast Steamship Company.

That at all the times herein mentioned, the said libelant was the sole owner of the American steamship called the "State of California," her engines, boilers, machinery, boats, tackle, apparel, and furniture, and that said steamship has heretofore been engaged in voyaging between San Francisco, California, and Portland, Oregon.

II.

That, in the month of April, 1886, the said steamship, being tight, staunch, well officered and manned, and with good, proper, and well conditioned machinery, and well and properly provided, apparelled and equipped, with Gerald Debney in command as mas-

ter, departed from the port of Portland, Oregon, with passengers and cargo, bound on a voyage to San Francisco, in the State of California.

III.

That, during said voyage, to wit, on the morning of April 7, 1886, about 4 o'clock, the said steamship, being then on the high seas and off the heads of the harbor of San Francisco, was voyaging towards the said harbor, with the captain and one of the mates on deck, and a full watch of seamen on deck and proper and efficient lookouts, and with all regulation lights properly set, and in good order and burning brightly; and that the said steamship, without any fault or negligence on her part, or on the part of those in charge of her, was carelessly and negligently run into by the said barkentine "Portland," the said barkentine striking said steamship on the starboard side a little forward of amidship.

That the said collision was caused by the negligence of those in charge of the said barkentine "Portland," in this, that the port side light of said barkentine had been taken down a few minutes previous to the collision in question, and from the relative positions of said steamship and said barkentine, the starboard side light of said barkentine was not visible to those in charge of the said steamship previous to said collision, and also in this, that said barkentine changed her course a few minutes previous to said collision, when she was in duty bound not to change her course at all; and also in this, that said barkentine, with full opportunity so to do, failed to exhibit any lighted torch to warn said steamship of her presence and proximity.

IV.

That by said collision said steamship was cut down below the waterline and a large hole was knocked in her starboard side, and one of the boats was destroyed, and one of her life rafts was destroyed, and other injuries were inflicted upon said steamship, and that the damage inflicted by said collision upon said steamship amounted to the sum of $8880.

V.

That the said barkentine "Portland" is now lying in the port of San Francisco, and within the jurisdiction of this honorable Court.

VI.

(Conclusion, Form No. 42 b.)

(a) The "State of California," 46 Fed. Rep. 877; 49 Fed. Rep. 172; 54 Fed. Rep. 404; 7 U. S. App. 20; 7 U. S. App. 652; see Ad. R. 15; see Desty's Fed. Proc., sec. 52.

No. 54.

Intervening Libel in Collision. (a)

(See Form No. 51.)

(Commencement, etc.)

Intervening libel of Philip L. Reese, administrator, in the cause of the libel of Jacob Nelson (see Form No. 51) pending in said Court, commenced on the twenty-fifth day of October, 1892; the intervening libel of Philip L. Reese, administrator of the estate of John E. Moe, deceased, on behalf of the widow and heirs of said John E. Moe, deceased, Philip L. Reese, a citizen and resident of Tacoma, Pierce county, Washington, and against the steamer "Premier," whereof (etc., as in libel Form No. 51), alleges:

I.

That on the eighth day of October, 1892, the deceased, John E. Moe, while travelling as a passenger upon the steamer "Premier," from the city of Port Townsend to the city of Tacoma, both in the State of Washington, his destination being said city of Tacoma, having paid for his passage thereon by purchase of a ticket from said City of Port Townsend to said city of Tacoma, was killed by the collision between said steamer "Premier" and the said steamship or collier "Willamette" on the navigable waters of Puget Sound, and within the State of Washington.

II.

That after the decease of the said John E. Moe, to wit, on the twenty-fifth day of October, 1892, there issued out of the Superior Court of the State of Washington, in and for Pierce county in said State, letters of administration to Philip L. Reese, libelant herein, upon the estate of the said John E. Moe, deceased, and that said libelant, Philip L. Reese, is now the duly qualified and acting administrator of the said John E. Moe, deceased.

III.

That the said John E. Moe left surviving him as his heirs I. M. Moe, his widow, and A. R. Moe, of the age of six years, P. E. Moe, of the age of four years, and J. E. Moe, of the age of two months, who are the children of the said John E. Moe and I. M. Moe.

IV.—V.

(Allegations as in II. and III., libel, Form No. 51.)

VI.

[Allegation as in IV. in Form No. 51, but concluding] that through, by and in consequence of said collision, the said John E. Moe, deceased, was bruised, maimed and injured so as to cause almost immediate death, and that death did ensue to said John E. Moe within a few minutes after said collision, to the great damage of the estate of the said John E. Moe, and his heirs and legal representatives, in the sum of $15,000.

VII.

That this libelant's decedent, John E. Moe, just prior to the injuries causing his death, and herein alleged, was in perfect physical condition, being able-bodied, in perfect health, and was able to and did perform daily labor for a long period of time prior to said accident or collision which brought him the sum of $2 per day, and that said decedent was forty-five years of age at the time of the accident herein mentioned, and that his widow, I. M. Moe, and his said children, etc., were wholly dependent upon said decedent, John E. Moe, for their maintenance and support, and are wholly without any means to maintain and support them.

VIII.

(Same as VII. in Form No. 51.)

IX.

(Same as VIII. in Form No. 51.)

X.

(Same as IX. in Form No. 51.)

XI.

That the widow of the said John E. Moe and the children of the said John E. Moe, as aforesaid, are the only heirs at law of the said John E. Moe, deceased, and that this libelant prosecutes this action as legal representative of the said John E. Moe, deceased, or his estate, the benefit of which is to enure to the said decedent's estate and said heirs at law of said decedent.

(Other formal allegations and conclusions, as in libel Form No. 51.)

(a) The "Willamette," 59 Fed. Rep. 797; 45 U. S. App. 26-96; Ad. R. 32.

No. 55.

Petition in Intervention by Administrator of Persons Killed by Marine Collision. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The petition of intervention of James Laidlaw, administrator of the estates, respectively, of Charles Austin, deceased, and Matthew Reed, deceased, intervening, as such administrator, in the above-entitled cause which is now pending and undetermined in said Court, alleges and articulates as follows:

I.

The said Charles Austin and the said Matthew Reed, before and at the time of the collision hereinafter set forth, were able seamen on board the British ship "Clan Mackenzie," duly shipped from the port of Cardiff, Wales, to the port of Rio Janeiro,

Brazil, thence to Portland, Oregon, and back to the United Kingdom or to the continent of Europe, and were each to receive wages for said voyage at the rate of three pounds sterling per month.

II.

The steamer "Oregon" and the steam towboat "Oklahama," with their tackle, apparel, engines, boilers, and other furniture, were at the time of said collision, and now are, operated by the Oregon Short Line and Utah Northern Railway Company, the claimant herein.

III.

Heretofore, and on or about the twenty-fourth day of December, 1889, the said ship "Clan Mackenzie," in the course of her said voyage, arrived at the port of Astoria, Oregon; and on the twenty-sixth day of December, 1889, said ship left Astoria for Portland, Oregon, her destination as aforesaid, in tow of said towboat "Oklahama," of which said towboat Empkin was at said time in charge. Said Empkin, at said time, acted both as river pilot for said ship "Clan Mackenzie," and as captain of said towboat, and was fully in charge of both of said vessels, for the purpose of towing said ship "Clan Mackenzie" to Portland, Oregon. Said ship continued in tow of said towboat until about eight o'clock P. M. on said twenty-sixth day of December, 1889, at which time the said Empkin anchored the said ship "Clan Mackenzie" on the Oregon side of said Columbia River, on the edge of the channel of said river, and about half a mile up stream from a point on said river known as Coffin Rock Light. Said ship was so anchored and placed in position by said Empkin, as pilot as aforesaid, and under his direction.

IV.

At the time of anchoring said ship, as aforesaid, the anchor light, or riding light, was placed in the rigging of said ship, clear and over all, as by law required; and said towboat cast off from said ship, and steamed to the Oregon shore of said river, and there made fast. A regular watch was at the same time placed on said ship, "Clan Mackenzie," and instructions were given to the watchman to keep said light clear, to keep a good lookout, and to ring the bell on said ship if the weather became foggy or thick. Said watch was duly kept, and said light was kept clearly and brightly burning, on said ship, "Clan Mackenzie," from the time of anchoring as aforesaid until the time of said collision.

V.

The said Charles Austin and the said Matthew Reed, having performed all the duties required of them on said twenty-sixth day of December, 1889, on the said ship "Clan Mackenzie," were relieved at the time of anchoring the said ship, as aforesaid, and thereupon retired for the night to their respective berths on said ship, as they were entitled to do. Their said berths were both on the port side of said ship, near the bow; and at the time of the said collision the said Austin and the said Reed were in their said berths respectively.

VI.

While the said ship "Clan Mackenzie" was thus anchored, and said towboat was fast to the Oregon shore of said river, and said Austin and Reed were in their respective berths, as aforesaid, at about one o'clock in the morning of the twenty-seventh day of

December, 1889, the said steamer "Oregon" ran into and collided with the said ship "Clan Mackenzie," striking said ship upon her port bow, and penetrating her hull for about thirty feet, thereby killing the said Charles Austin and Matthew Reed, who were at the time in their berths on said ship, as aforesaid.

VII.

At the time of said collision, and immediately prior thereto, the said steamer "Oregon" had not a proper lookout and watch on board, to guard against the danger of collision, and had not a proper and competent pilot aboard or in charge of said steamer. The master of said steamer was at said time asleep, and no competent officer was in charge of said steamer. At said time, the crew of said steamer were fighting among themselves. And said collision was due to and occasioned by the negligence, inattention, and want of proper care and skill on the part of said steamer "Oregon," her master, pilot, and crew. And if there were any other negligence, inattention, or lack of skill, tending to or in connection with the said collision, it was the negligence, inattention, and want of skill of said steam towboat Oklahama and said Empkin, and of the others in charge of said towboat, in placing said ship "Clan Mackenzie" in said anchorage, and in leaving her at anchor alone.

VIII.

Thereafter, on proper proceedings had therefor in the County Court of the State of Oregon for the County of Columbia, in the jurisdiction of which said Court said collision occurred and said Austin and Reed were killed, as aforesaid, the said James Laidlaw, petitioner and intervenor herein, was duly ap-

pointed administrator of the estate of said Charles Austin, deceased, and administrator of the estate of said Matthew Reed, deceased; and the said Laidlaw having duly qualified as administrator of said estates respectively, letters of administration upon said respective estates were duly issued to him on the sixth day of February, 1890; and he ever since has been and now is the duly appointed, qualified, and acting administrator of the estates of said decedents respectively.

IX.

The said Charles Austin, at the time of his death as aforesaid, was about twenty-six years of age, and in good and sound health, both mentally and physically. The said Matthew Reed, at the time of his death as aforesaid, was about sixty-five years of age, and in good and sound health, both mentally and physically. By the death of said Austin and Reed, occasioned as aforesaid, their respective estates have each been damaged in the sum of five thousand dollars.

X.

(Conclusion, see Form No. 42 b.)

(a) The Oregon, 45 Fed. Rep. 62; 73 Fed. Rep. 846; 158 U. S. 186; 48 U. S. App. 430; Ad. R. 32.

No. 56.

Libel for Freight Charges (a).

[Title of Court and Cause.]

To the Honorable, etc.

The libel of the Pacific Coast Steamship Company, owners of the steamer "Bonita," in a cause of contract, civil and maritime, respectfully shows and alleges:

I.

That libelant is, and during all the times herein referred to was, a corporation organized and existing under and by virtue of the laws of the State of California, with its office at the city and county of San Francisco, said State.

II.

That respondents above-named are, and during all the times herein referred to were, merchants and copartners doing business at the said city and county of San Francisco, under the firm name and style of Moore, Ferguson & Co. and residing at said city and county.

III.

That at and during all the times herein referred to, libelant was the owner of, and was in control of, that certain steam vessel named "Bonita," and that heretofore, towit, on the second day of November, 1894, said Moore, Ferguson & Co. shipped on board of said steamer "Bonita," at Moss Landing, to be from said landing transported and delivered to the Howard Commercial Co., at the port of San Diego, all in the State of California, certain merchandise, to wit, 2,448 sacks of barley marked "96," and weighing 271,510 pounds; and said Moore, Ferguson & Co. then and there agreed, in consideration, that the same was so shipped and should be so transported and delivered; to pay to libelant the sum of $4.35 per ton of 2,000 pounds for each and every such ton of the same so shipped and so transported and delivered. That at the time aforesaid, to wit, the time Moore Ferguson & Co. so shipped such barley, it was agreed by and between said Moore, Ferguson & Co. and libelant, at the special instance and request of said Moore, Ferguson & Co., that such barley should be

delivered to the Howard Commercial Co. at said San Diego, upon the payment by said Howard Commercial Co. to libelant, upon such delivery, of the sum of $2.50 per ton of 2,000 pounds for each and every such ton that should be so delivered, which sum of $2.50 per ton so to be paid should be credited as a payment, on account, toward the payment of said sum of $4.35 per ton agreed to be paid by said Moore, Ferguson & Co., as above-stated, the balance of such sum of $4.35 per ton, to wit, the sum of $2.10 per ton of 2,000 pounds, said Moore, Ferguson & Co., promised and agreed, such delivery of said barley being first made, to pay on demand to libelant.

IV.

That thereupon, and thereafter, said barley, and all thereof, was transported on said steamer, and on, to wit: the sixth day of March, 1884, was delivered in good order and condition, to said Howard Commercial Co., at said San Diego, in full compliance with the agreement above stated, and there was paid to libelant upon such delivery by said Howard Commercial Co., and the same was accepted by libelant pursuant to the agreement with said Moore, Ferguson & Co., the sum of, to wit: $339.38, being the sum of $2.50 per ton, for each and every ton of 2,000 pounds of such barley so shipped and so delivered.

V.

That thereafter, and heretofore, to wit, on the —— day of November, 1894, the said Moore, Ferguson & Co. were fully informed by libelant of the facts aforesaid, to wit: of such delivery and payment, as aforesaid, and the demand was thereupon made upon said Moore, Ferguson & Co., by libelant; that said

Moore, Ferguson & Co. pay to libelant the balance of said sum of $4.35 per ton, agreed to be paid to libelant by said Moore, Ferguson & Co., as aforesaid, to wit: the full sum of $251.15, which sum and every part thereof said Moore, Ferguson & Co. then did, and ever since, though often requested so to do, have neglected, declined, and refused to pay to libelant; and there is now due to libelant as freight upon such barley, so shipped, the sum of $251.15, together with interest on said sum from the said sixth day of November, 1894.

VI.

That by reason of the premises, libelant has been damaged in the full sum of two hundred and fifty-one and fifteen one-hundredths ($251.15) dollars, and interest as aforesaid.

VII.

(Conclusion, Form No. 42 a.)

(a) Pacific Coast Steamship Co. v. Ferguson, 70 Fed. Rep. 870; 44 U. S. App. 708; see Desty's Fed. Proc., sec. 52.

No. 57.

Libel in Personam for Freight Charges (a).

[Title of Court and Cause.]

To the Honorable, etc.

The libel of A, B, and C, D, composing the firm of A & Co., owners of the ship "————," her tackle, apparel, and furniture, against Y and Z, composing the firm of Y, Z & Co., of the city of New York, merchants, in a cause of contract, civil and maritime, allege as follows:

I.

That they were at the times hereinafter mentioned and still are the owners of the ship "————," and that M was then the master thereof.

II.

That sometime in the month of —— last the said ship, then lying in the port of San Francisco and destined thence on a voyage to the port of New York, K, shipped on board of said ship (describe cargo), weight and contents unknown, to be therein carried from the said port of San Francisco to the port of New York, and there to be delivered, the dangers of the seas only excepted, in like good order as they were received, to the defendants, Y, Z & Co., or to their assigns, he or they paying the freight for the same at the rate of ————, without primage and average accustomed. And accordingly said master, at the port of San Francisco, on the —— day of ——, 18——, affirmed to the usual bills of lading and delivered the same to the shippers of said cargo, a copy of which bills of lading is hereto annexed marked Schedule A.

III, IV, etc.

(Repeat for other shipments to same consignees, mutatis mutandis.)

IV.

That soon afterward said ship, with the said cargo on board, set sail from San Francisco for New York and there in due time safely arrived, and the said (cargo) was duly delivered to the said Y, Z & Co., and was by them accepted and received.

V.

That by reason of the premises the said Y, Z & Co. became bound to pay to these libelants the freight for the said merchandise, which amounted in the whole to the sum of $——, as is more particularly set forth in the schedule hereto annexed marked ————.

VI.

That the said Y, Z & Co., notwithstanding they have accepted and received the said merchandise and that in like good order and condition as it was shipped, have refused to pay the freight for the same although often thereto requested, and there is now due the libelants for the freight on said merchandise the sum of $——.

VII.

(Conclusion, see Form No. 42 a.)

(a) See Desty's Fed. Proc., sec. 52.

No. 58.

Libel by Passenger for Breach of Contract to Carry (a).

[Title of Court and Cause.]

To the Honorable, etc.

Now come the above-named libelants, A B, a citizen of the United States and resident and citizen of the State of New York, and C D, a resident and citizen of the State of Iowa, and, leave of Court being first obtained, make and file this their amended libel in the above-entitled action, against the steamship

"————," her tackle and furniture and apparel, and the ———— Co., owners thereof, and all other persons who may intervene lawfully in this action, which is an action on contract and maritime; and for a cause of action in favor of the libelant A B allege as follows:

I.

That at the time of the commencement of this action and the filing of the original libel herein, the said steamship ——— was lying in the waters of ———, at or near the port of ———, in the State of ———, and within the jurisdiction of the above-named Court.

II.

That during all the times herein-mentioned the said steamship ———— was owned and operated by the said Z Co., which was and is a corporation organized and existing under and by virtue of the laws of the State of ———, entitled to do business within the State of ———, having complied with the statutes of said last-mentioned State in relation thereto, and was engaged during the times herein mentioned as a common carrier by water of passengers, baggage, and freight between said city of ———, and ———, in the ——, Dominion of Canada; and that during all of said time one E. B. ——— was the general manager and one C. W. ——— was the agent of the said steamship ——— and of said respondent company, duly authorized and empowered to enter into any and all contracts on behalf of said steamship ——— and of said company for the transportation of passengers, baggage, and freight, from said city of ———, to said ———, and during all of said time the said respondent was engaged in operating a certain other steamship known as the ———— in con-

nection with its said business as a common carrier between the points aforesaid.

III.

That on or about the ——— day of ———, 18—, and prior and subsequent thereto, the said steamship ——— and respondent company, through her owners, manager, and agent, as aforesaid, caused it to be publicly and extensively advertised that the said steamship ———, in tow of the said steamship ———, would leave the city of ——— for ———, ———, on the ——— day of ———, 18—, and would transport and carry passengers to the number of 350 or less, including their baggage and freight, not to exceed 1,500 pounds each, and would reach said ——— not later than the ——— day of ——— 18—; a copy of two of which advertisements is hereto attached and marked Exhibit "A" and Exhibit "B," respectively.

IV.

That relying upon the good faith of said advertisements, and believing the representations therein made to be true, and upon the further oral representations and promises of a like nature made to said libelant by the said owners, general manager, and agent of said steamship ———, said libelant A B, on or about the ——— day of ———, 18—, made and entered into a contract with the said steamship ———, through her said owner, manager, and agent, wherein and whereby the said steamship ——— undertook, promised, and agreed to carry libelant from the said city of ———, to the said ———, via the port of ———, and would leave ——— on said voyage on the ——— day of ———, 18—, and would reach said ——— not later than ———, 18—;

and among other things it was understood and agreed by and between said steamship ———, through its said owner, agents, and manager, and this libelant, that the said steamship ——— would leave the said city of ———, on said voyage in tow of the said steamship ———, and would be towed by the said ——— from ——— to said port of ———, from which place the said ——— would continue said voyage alone up the ———— river, to said ————, and would reach there on ———— as aforesaid, and in consideration of said premises and agreements on the part of the said steamship ————, this libelant at the date aforesaid, engaged passage on said steamship from ———— to said ————, and paid therefor the passage money, amounting to the sum of three hundred dollars for the conveyance of himself and 1,500 pounds of baggage, and received tickets for said passage.

V.

That said libelant performed all the terms and conditions of said contract on his part to be performed, and on or about the said ——— day of ———, 18—, the said steamship ——— entered upon the performance of said contract on her part, and left said city of ———, in tow of the said steamship ———, and undertook to carry libelant and other passengers over the whole of said voyage and proceeded on said voyage upon the high seas for a distance of upwards of six or seven hundred miles up to the coast of ———, when the said steamship ——— abandoned the said voyage and refused to proceed further thereon, and this libelant was landed at the city of ———, and said steamship ——— wholly failed and neglected to keep said contract on her part.

VI.

That this libelant, on the faith of said representations and agreements on the part of the said steamship ———, went to a large expense to prepare himself for said voyage, and purchased an outfit therefor at an expense of $200.00, which was, by the failure of said ship to keep said agreement, rendered valueless to him, and lost a large amount of time, during which he was hindered in carrying on his business, or doing any work, in all to his damage in the sum of $1,000.00.

I.

And for a cause of action in favor of the libelant C D, libelants allege:

That paragraphs Nos. I, II, and III, of the first cause of action, are hereby referred to and made a part of this second cause of action.

II.

That relying on the good faith of said representations, and believing same to be true, and upon the further oral representations and promises of a like nature made to this libelant by said owner, manager, and agent of the said steamship, ————, said libelant C D, on or about the —— day of ———, 18——, made and entered into a contract with the said steamship ———, through her said agent, manager, and owner wherein and whereby the said steamship ——— undertook, promised, and agreed to carry libelant from said city of ———— to said ————, and to leave ——— on said voyage on the —— day of ——, 18——, and would reach said ———, and not later than ———, 18——, and among other things it was understood and agreed between said steamship ———— and this libelant that the said steamship

——— would leave the said city of ——— on said voyage in tow of said steamship ———, and would be towed by the said ——— from ——— to ————, from which place the said ——— would continue said voyage alone up the ———— river to said ————; and in consideration of said promises and agreements on the part of said steamer ———, this libelant engaged passage for said voyage from ———— to ————, and paid therefor the passage money, amounting to the sum of three hundred dollars, for the conveyance of himself and 1,500 pounds of baggage.

III.

That this libelant performed all the terms and conditions of said contract on his part to be performed, and on or about the —— day of ——, 18—, the said steamship ———— entered upon the performance of said contract on her part and left the said city of ——— in tow of the said steamship ———, and undertook to carry libelant and other passengers over the whole of said voyage, and proceeded on said voyage upon the high seas for a distance of upwards of six or seven hundred miles, when she abandoned said voyage and refused to proceed further thereon, and this libelant was put off said ship at the city of ——.

IV.

That by reason of the failure of said steamship to perform said contract on her part, this libelant was greatly damaged, in the manner following: That on the faith of said representations and contract he prepared himself for said voyage at an expense of $200.00 in money, and was hindered and prevented from carrying on his business for a long period of time, in all to his damage in the sum of $1,000.00.

V.

(Conclusion, Form No. 42 b, varied as follows:) Wherefore, libelants pray that process in due form of law may issue for the attachment of said steamship ————, her tackle, apparel, and furniture, that the Court decree a return of the passage-money, to wit, the sum of $300.00, to each of these libelants, and that the libelants each recover the further sum of $1,000.00 for their damages herein, and that said steamship be condemned and sold to satisfy the same, and that such other and further relief be granted as to the Court may seem just.

AB.
CD.
Libelants.

(a) Jacobi v. Green, 83 Fed. Rep. 222; see Desty's Fed. Proc., sec. 52.

No. 59.

Petition in Intervention on Libel for Breach of Contract to Carry. (a)

(See Form No. 58.)

[Title of Court and Cause.]

To the Honorable, etc.

Now comes C, a resident of the State of ————, and D, a resident of the State of ————, and E, a resident of the State of ————, all citizens of the United States, and respectively petition the Court for leave to intervene in the above-entitled action as co-libelants therein, and that they be permitted to prosecute the above-entitled action as such co-libelants upon such terms as the Court may deem reasonable, and as grounds for such intervention,

these petitioners respectfully show to the Court and allege:

I.

That they are entitled to participate in any recovery which may be had herein by the libelants out of the condemnation and sale of the steamship ————, mentioned in the original libel herein, and now in the custody of the Court by virtue of the marshal's attachment thereof, and that they ought to be permitted to share in such recovery to the extent of their respective claims against the said steamship ————, hereinafter more fully set forth.

II.

They admit each any every allegation set forth in paragraph No. II of libelants' libel herein, and that the said steamship ————, during the time therein and in this petition mentioned, was owned and operated by the said respondent, the Z Company, a corporation organized and existing under and by virtue of the laws of the State of ————, and was the owner and engaged in operating the steamship ————, mentioned in said libel, plying on the waters between the city of ———— and the port of ————, and that one E. B. ———— was the general manager, and F. C. ———— & Company were the agents of said steamship company, respondent herein, and as such were duly empowered and authorized, on behalf of said respondent and of said steamship "————," to enter into and make any and all contracts for the transportation of passengers, baggage and freight from the said city of ————, to ——— ————, via said port of ————, and your petitioners further allege, in addition thereto, that the said respondent company was, during the times herein

mentioned, a common carrier of passengers, baggage, and freight between the said places, and in the prosecution of its said business as such carrier it was operating the said steamships mentioned.

III.

Your petitioner further alleges that on or about the —— day of ———, 18——, and prior and subsequent thereto, the said respondent, the Z Company, through its said general manager and agents, caused it to be publicly and extensively advertised that they would, on their said ships, the "————" and said "————," transport passengers, baggage, and freight from the city of ————, to said ————, ————, and would leave said city of ————, ————, on or about the —— of ——, 18——, on said voyage, and that they would carry said passengers, baggage, and freight from ————, ————, to ————, ———, upon the said steamship "————" and that on said voyage the said steamship "————" would be towed by the said steamship "————" to ——— —, ———, and at ————, ————, the said voyage would be continued on to said ————, ————, by the said steamship "————"; that upon the good faith of said representations and particular representations made to them by the said general manager and agents of the said respondent, the Z Company, these petitioners, on or about the date aforesaid, engaged passage to make said voyage as aforesaid, and entered into a contract therefor, each for himself, with the said respondent for the conveyance of themselves and fifteen hundred pounds of baggage for each, from the city of ————, ————, to said ————, ——— ————,

and by the terms thereof the said respondent, on behalf of said steamship "————," contracted and agreed to prosecute said voyage with diligence, and that they would reach said ————, ————, on or about ——— ——, 18——, or within a few days thereafter, when the said steamship "————" would proceed and continue the voyage to ———— ——, ———— ————, and land petitioners with their said baggage at ———— ——, ———— —— ————, within a reasonable time thereafter, and to that end these petitioners purchased passage for said voyage, each for himself, paying therefor the sum of three hundred dollars ($300.00), and received therefor tickets issued by the said respondent company, good for such passage.

IV.

That petitioners, on their part, complied with all the terms and conditions of the said contract, and on or about ——— ——, 18——, started upon said voyage with the said steamships, the said "—— ———," being towed by the "————," which proceeded thereon from the port of ————, —— ——, for a distance of several hundred miles upon the said high seas, when the said steamship "—— ———" and the said respondent company abandoned the said voyage, and failed, refused, and neglected to keep said contract on their part, and put said petitioners off said ship at —— ——, ———— ————, and refused to carry them and their said baggage in accordance with said contract, or at all; that by reason of the failure of the said steamship "————" and of said respondent, the Z Company, to perform its said contract with petitioners, petitioners suffered great loss, and were subjected to great delay, annoyance and

worry; that petitioners, each for himself, paid out to respondents for said passage the sum of three hundred dollars ($300.00), which respondents refused to return to them and that each for himself paid out for a miner's supply and outfit, intended for the use of petitioners at their said destination, the sum of three hundred dollars($300.00), which has been rendered valueless to said petitioners by reason of the abandonment of said voyage; that petitioners have been, each for himself, damaged in the sum of two hundred dollars ($200.00) for the loss of seven weeks' time, to wit, from ——— ———, ——, to ——— ———, 18——, making in all eight hundred dollars' damage to each of your said petitioners.

Wherefore, petitioners pray that they be permitted to intervene herein to prosecute this action as co-libelants, upon complying with such terms as the Court may impose; that their said respective claims be allowed against the said steamship "————," to wit, that the Court decree a return to each of them of the said sum of three hundred dollars ($300.00), paid out by them for passage; that each for himself recover the further sum of five hundred dollars ($500.00) damages, in all the sum of eight hundred dollars ($800.00); that the said steamship "————" be condemned and sold to satisfy the same, and for such other and further relief as to this Court may seem just.

C.
D.
E.

————,
Proctors in Admiralty.

(a) Jacobi vs. Geer, 83 Fed. Rep. 222; Ad. R. 34.

No. 60.

Libel in Rem for Supplies. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of R. D., chandler, against the steamship "Willamette Valley," her tackle, apparel, and furniture, and all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges:

I.

That the steamship "Willamette Valley" was at all the times hereinafter mentioned, and still is, a vessel plying on regular voyages between the port of San Francisco and Yaquina Bay, in the State of Oregon, and from said last named port or place to said port of San Francisco.

II.

That said steamship "Willamette Valley" is, as this libelant is informed and believes, a foreign vessel, not being at any of the times herein mentioned, owned by a citizen or citizens of the State of California, nor was nor is said vessel registered or enrolled at any port in said State, but, as this libelant is informed and believes, is registered and enrolled in the port of New York, State of New York.

III.

That said vessel, at the port of San Francisco, standing in need of supplies, to wit, coal, necessary to enable her to perform the voyage in the said article of this libel mentioned, this libelant, who then was and still is a citizen of the State of California, on the request of the agents of the said vessel, acting

for the owner thereof, between the third day of November, 1892, and the twelfth day of January, 1892, furnished said vessel on the credit thereof, coal, to the amount in value of $7,518.

IV.

That, although thereunto requested, neither the agent or agents, owner or owners, of said vessel, have paid said amount or any part thereof, but have wholly neglected and refused so to do, and the whole of said amount, except the sum of $393, to wit, the sum of $7125, is now due and owing to this libelant.

Second Cause of Action.

I.

For another and separate cause of action this libelant refers to each and every of the allegations in the first and second articles in the first cause of action in this libel set forth, and incorporates them herein with the same effect as though they had been specially repeated, and avers that said vessel, at the port of San Francisco, standing in need of supplies, to wit, coal, necessary to enable her to perform the voyages in the first article of this libel mentioned, this libelant, who then was and still is a citizen of the State of California, on the request of the agent of the said vessel, acting for the owners thereof, on the sixth day of December, 1893, furnished said vessel, on the credit thereof, coals to the amount in value of $263.75, and that although thereunto requested, neither the agent nor agents, owner nor owners, of said vessel, have paid said amount or any part thereof, but have wholly neglected and refused so to do, and the whole of said amount, to wit, the sum of $263.75, is now

due and owing to this libelant. A schedule of said account is hereunto annexed and made a part of this libel.

II.

The said vessel is now in the Northern District of California and within the jurisdiction of this honorable Court.

III.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

(Conclusion, No. 42 b.)

Exhibit to Libel.

Steamer "Willamette Valley" bought of R D, chandler.

(Here follows itemized statement of coals furnished.)

(a) The "Willamette Valley," 66 Fed. Rep. 565; 29 U. S. App. 447; see Desty's Fed. Proc., sec. 52.

No. 61.

Libel of Intervention for Supplies. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of intervention of the North American Commercial Company, a corporation, against the vessel "Louis Olsen," now being in the custody of the marshal of the District aforesaid, under arrest by virtue of a writ of venditioni exponas issued out of said district in the suit of the United States of America

in a cause of forfeiture, civil and maritime, advertised for sale by said marshal upon and under the decree of said Court forfeiting said vessel to said United States of America, and against the proceeds to arise from the sale of said vessel by said marshal under such decree, in a cause of contract, civil and maritime, alleges:

I.

That at all the times hereinafter mentioned, the said intervening libelant was and still is a corporation, organized under the laws of the State of California, with its principal place of business at the city and county of San Francisco in said State.

II.

That at all of said times said vessel was, and still is, owned by persons who are residents at Victoria, B. C., in the Dominion of Canada, and that said vessel at said times belonged to the port of Victoria, B. C.

III.

That on or about the —— day of July, 1894, the said vessel was in the port of Dutch Harbor, Alaska Territory, in the District of Alaska, and stood in need of provisions, supplies and other necessaries in order to render her seaworthy and to enable her to proceed upon the sealing voyage upon which she was then and there engaged. That the said libelant in said month of July, 1894, and at said port of Dutch Harbor, Alaska, at the request of the master of said vessel, furnished her with provisions, supplies, coal and other necessaries, amounting in all to the sum of $401.56, in gold coin of the United States.

IV.

That said vessel was then and there in a foreign port and could not safely proceed to sea without the said supplies, provisions and other necessaries in the said last preceding article mentioned, and the same were furnished on the credit of the said vessel as well as on the credit of the master and owner thereof.

V.

That said supplies, provisions and other necessaries were used by said vessel on said sealing voyage and on the sealing voyage upon which said vessel was seized by the officials of said libelant, and were necessary and essential for the conduct of such voyage, and were supplied by this intervenor in good faith and with no knowledge whatever of said vessel being engaged previously or at such time in any act contrary to the statutes of the United States or treaty stipulations between the United States and any foreign government, and with no knowledge that any illegal venture or voyage was about to be undertaken.

VI.

That this libelant has requested said owners to pay the said sum of $401.56, but they have wholly neglected and refused to pay the same or any part thereof, and there now remains due to this libelant and unpaid the said sum of $401.56, in gold coin of the United States.

VII.

That the lien of the intervenor against said vessel and the proceeds from the sale thereof is prior and superior to the interest of the United States of America in and to the said vessel and such fund.

VIII.

That all and singular the said premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

Wherefore, this intervening libelant prays that process of monition may issue to the marshal of the district aforesaid, commanding him to cite and admonish all persons having or pretending to have any right, title or interest in said steamer "Louis Olsen," her tackle, apparel or furniture, to appear before this Honorable Court on such day as in the said monition the Court shall direct, then and there to answer the libel in the premises according to the course of the Courts of admiralty and the rules and practice of this honorable Court in civil cases of admiralty and maritime jurisdiction; and also that a warrant of arrest in due form of law may issue to the marshal against the said steamer "Louis Olsen," her tackle, apparel and furniture, and that this Court will pronounce for the libelants' aforesaid demand and decree, the same to be paid with costs from and out of the funds derived from the sale of such vessel, under the writ aforesaid, and for such other and further relief as is meet and proper in the premises.

ANDROS & FRANK,
and WILLIAMS, WOOD & LINTHICUM,
Proctors for the intervening libelant.

(a) The "Louis Olsen," 57 Fed. Rep. 845; 71 Fed. Rep. 223; 15 U. S. App. 229; Ad. Rule, 34.

No. 62.

Intervening Libel, Repairs and Material. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The intervening libel of C. Hennigar against the steamer or vessel "Eugene," her tackle, apparel and furniture, whereof ———— now is, or late was master, in a case of action, civil and maritime, alleges as follows:

I.

That between Sept. 1, 1897, and Sept. 20, 1897, said libelant performed labor and services upon said steamer "Eugene," at the special instance and request of the master thereof, and that in pursuance of said request libelant did haul out said steamer and repair the same upon libelant's shipways at Ballard, Wash., and that libelant will be compelled to launch said steamer. That the reasonable value of said repairs, hauling out, launching and for time on said ways is ($550) five hundred and fifty dollars; that payment was demanded but refused.

II.

That the said vessel, her tackle, etc., is now within the said district.

III.

(Conclusion. Form No. 42 b.)

Jacobi vs. Geer, No. 430; 83 Fed. Rep. 222; Desty's Fed. Proc., sec. 52.

No. 63.

Libel on Marine Insurance. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of the Earnmoor Steamship Company, Limited, against the New Zealand Insurance Company, alleges:

I.

The libelant is, and at all times hereafter mention was, a limited company or corporation, created under the laws of the United Kingdom of Great Britain and Ireland, and has an office for the transaction of business at Newcastle, England.

The respondent is, and at all the times herein alleged was, a corporation created by and under the laws of the United Kingdom of Great Britain and Ireland, and was at the times hereinafter mentioned duly authorized to insure vessels and cargoes and other maritime risks, and had an office at the city of San Francisco, in the State of California.

II.

On or about March 8, 1888, the respondent, in consideration of the premium of ninety dollars to it paid, issued and delivered its certain policy of insurance dated on that day, to one Alfred Earnshaw, by which it did insure said Earnshaw, for whom it might concern, in the sum of fifteen hundred dollars, upon the body, tackle, machinery, and apparel of the steamship "Earnmoor," for one year from that date, against perils of the sea and other perils in said policy set forth.

III.

At all the times hereinafter mentioned, the libelant was the owner of the steamship "Earnmoor," her body, tackle, machinery, and apparel, and said insurance was made for and on behalf of libelant.

IV.

Said steamship "Earnmoor" left the port of Philadelphia, Pennsylvania, on January 10, 1889, bound for Saint Thomas, with a cargo of soft coal. While proceeding upon said voyage and going down the Delaware, and during the pendency of said risk, she struck a rock. The vessel was soon noticed to be settling forward, and the pumps had shown that she was filling rapidly; her helm was ported and the engines set ahead so as to run her ashore, and this prevented her from sinking in deep water.

V.

And as a result of the beaching of said vessel, she sustained injuries and damages, which, after a due adjustment thereof made at Philadelphia, the sum of nine hundred and ninety-seven 41-100 dollars was found to be due under respondent's said policy.

VI.

Although said sum has been duly demanded by libelant from respondent no part thereof has been paid.

VII.

(Conclusion, Form No. 42 a.)

(a) New Zealand Ins. Co. vs. Earnmore Co., Ltd., 73 Fed. Rep. 867; 48 U. S. App. 245; see Desty's Fed. Proc., sec. 52.

No. 64.

Libel on Marine Insurance. (a)

To the Honorable, etc.

[Title of Court and Cause.]

The libel of Thomas O'Farrell, against the Thames & Mersey Marine Insurance Company, Limited, in a cause of contract of insurance, civil and maritime, alleges:

I.

That this libelant was, on the twenty-fourth day of November, 1894, the owner of one undivided fourth part of the schooner "Robert and Minnie," and so continued until the said vessel was totally lost as hereinafter is set forth.

II.

That on the twenty-fourth day of November, 1894, the Thames & Mersey Marine Insurance Company, Limited, in consideration of the sum of ninety dollars, by this libelant agreed to be paid to it, underwrote its policy of insurance on this libelant's one fourth part interest in said schooner "Robert and Minnie," and delivered the same to him, wherein and whereby it insured his interest in said one-fourth part interest in said schooner "Robert and dollars, from the twenty-fourth day of November, 1894, at twelve o'clock, noon, San Francisco, mean time, to the twenty-fourth day of November, at twelve o'clock, noon, San Francisco, mean time, in the year 1895, against perils of the seas and other perils in said policy set forth. A copy of said policy of insurance is hereunto annexed and made a part of this libel.

III.

That on the sixteenth day of March, 1895, said policy of insurance then being in full force, said vessel sailed from the port of San Francisco, bound on a voyage to Suislaw River, in the State of Oregon, a port or place on the west coast of North America, and north of the said port of San Francisco.

That on or about the fourth day of April, 1895, the said vessel, while proceeding on her voyage to said port or place, was, by perils of the sea, cast on shore, wrecked, and totally lost at a point on the coast of Oregon about three miles to the southward of the entrance of said Suislaw River, which said vessel did not at any time while said policy was in force enter.

IV.

That said respondent was duly notified of the loss of said vessel as aforesaid, and waived proof and adjustment of loss and proof of interest, but refused, and still does refuse, to pay the said sum of one thousand dollars, insured as aforesaid on the interest of this libelant in said vessel, on the ground that said vessel was wrecked and lost while using a port or place, to wit, the Suislaw River, not allowed by the terms of said policy of insurance.

V.

That by reason of the premises said respondent has, under its said policy of insurance, become and is indebted to this libelant in the sum of one thousand dollars.

VI.

(Conclusion, Form No. 42 a.)

(a) O'Connell vs. Thames & Mersey Insurance Compy., 56 U. S. App. 676; see Desty's Fed. Proc., sec. 52.

No. 65.

Libel on Marine Insurance (Personal Effects). (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of Alexander Woodside and Isabella Woodside, his wife, against the Canton Insurance Office, Limited, a corporation, in a cause of contract, civil and maritime, alleges:

I.

At all the times hereinafter averred the respondent above named was, and it still is, a corporation, organized under the laws of Great Britain, and engaged at the ports of Hong Kong, San Francisco, and elsewhere, in the business of insuring ships, merchandise, and other risks against the dangers of the seas and other perils.

II.

On or about the twelfth day of March, 1895, said respondent, for the consideration therein named, issued and delivered to the libelant, Alexander Woodside, its policy of insurance, whereby it insured the libelant on his own account, as well as on account of any other person to whom the subject matter of said policy might appertain, in the sum of two thousand dollars, upon personal effects belonging to himself and his family, valued at two thousand dollars, in the steamship called the "Bawnmore," said insurance to be from the twelfth day of March, 1895, until the twelfth day of March, 1896, against the perils of the seas and other perils in said policy mentioned. And it was in and by said policy warranted and

agreed that the insurance so granted should be free from all average. A copy of said policy is hereunto annexed and made part of this libel.

III.

On the twenty-fifth day of August, 1895, the said steamship left Comox in British Columbia, under command of the libelant, bound for Champerico and other Central American ports with a cargo. After being three days out on her said voyage the said steamer, owing to a dense fog which had prevailed for some time, went ashore, and became and was a total loss.

IV.

At the time of said departure of said steamship, the libelants, who were and are husband and wife, had on board of said steamer personal effects, consisting of clothing, bedding, charts, nautical instruments, silverware, and other things, of the value of more than four thousand dollars; all of which were also on board thereof at the time of the said wreck of said vessel, and were totally lost by reason of perils insured against, except one sextant, which was saved in a damaged condition, thirteen charts, which were washed ashore, torn, stained, and damaged by water, and a few clothes, including those worn by the libelants, all of which were also damaged by water.

V.

The libelants were interested as owners in the said effects so insured to the full extent of two thousand dollars at the time of said loss.

VI.

After the loss aforesaid, the libelants duly abandoned to the respondent all of said merchandise and effects, as for a total loss, but the respondent has refused to accept the same.

VII.

The libelants have demanded of the respondent that it pay the said loss, but the respondent has refused, and still does refuse, so to do, to their damage in the said sum of two thousand dollars.

VIII.

(Conclusion, Form No. 42 a.)

(a) Woodside vs. Canton Insurance Office, 84 Fed. Rep. 283; see Desty's Fed. Proc., sec. 52.

No. 66.

Libel (Marine Insurance). (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of the above-named libelants against the above-named respondent, respectfully shows to the Court:

I.

At all the times herein named the libelants were, and are now, copartners, merchants, doing business in the State of New York.

II.

At all of said times the respondent was and now is a corporation, organized and existing under the laws of the Republic of France, and doing business at San Francisco and elsewhere as an insurer against maritime losses.

III.

On the eighth day of July, 1872, said company, for a valuable consideration, issued and delivered to Messrs. Hapgood & Co, of Portland, Oregon, loss, if any, payable to their order on account of concerned, its policy of insurance, whereby it insured $3,000 upon five hundred cases of salmon, valued at said sum, laden or to be laden under deck on board the bark "Belle of Oregon," lost or not lost, at and from Portland aforesaid to New York, against losses by perils of the seas and other losses usually covered by marine insurers, and it was in and by said policy agreed between the parties thereto that said merchandise thereby insured was warranted by the insured free from particular average, and partial loss, unless occasioned by stranding, sinking, fire, collision or other extraordinary peril thereby insured against, and amounting to fifty per cent or more of the sound value of the whole shipment at the port of delivery, and that all such loss should be settled on the principles of salvage loss, with benefit of salvage to the insurers.

IV.

After said policy had attached and while the same was in force, the goods insured in said policy were, by the perils insured against, damaged to an amount exceeding fifty per cent on the sound value of the whole shipment at the point of delivery, whereby

the insured under said policy became entitled to demand and receive from the insurer to full amount of his said loss, towit, the sum of $2452.30. The libelants have received on account of said loss the sum of $1341.50, and no more, and the amount now due to them is the sum of $1,110.80.

V.

The libelants, to whom the said policy was by its terms made payable in case of loss, made proofs of their said loss and requested the respondents to pay the same, but the respondent has refused and does still refuse to pay the same, to the damage of the libelants in the sum of $1,110.80.

Wherefore, libelants pray that a monition, according to the course of this honorable Court in cases of admiralty and maritime jurisdiction may issue against said respondents, and that they may be required to answer all and singular the matters aforesaid, and that this honorable Court would be pleased to decree the payment of the amount so due to the libelants, with costs, and that the libelants may have such other and further relief as in law and justice they may be entitled to receive.

PAGE, EELLS & WHEELER,
Proctors for libelants.

(a) 75 Fed. Rep. 110; 44 U. S. App. 550; see Desty's Fed. Proc., sec. 52.

No. 67.

Petition by Owner for Limitation of Liability.

Caption.

In the District Court of the United States, for the District of ————.

In the Matter of the Petition of Z, Owner of the Steamship "————," for a Limitation of Liability.

No. 68.

Petition for Limitation of Liability (Personal Injuries). (a)

[Title of Court.]

In the Matter of the Petition of JACOB JENSEN et al., Owners of the American Bark "Sumatra," for a Limitation of Liability.

To the Honorable, etc.

The petition of Jacob Jensen, B C D, etc., respectfully shows:

I.

That at all the times hereinafter mentioned, your petitioner, The E Company, was a corporation duly organized and doing business under the laws of the State of California, with its principal place of business in the city and county of San Francisco, in said State.

II.

That the petitioners, Jacob Jansen, etc., at all the times hereinafter mentioned, were and are now residents of the State of California, and in the Judicial District of the United States for the ——— District of California.

III.

That at all of said times your petitioners were and still are the owners of the American bark "Sumatra," in the following proportions, to wit, Jacob Jensen, one-eighth part thereof, etc.

IV.

That said bark "Sumatra" is a vessel of about ten hundred and seventy tons burden, net measurement, and duly enrolled according to law in the office of the United States collector of customs for the District of San Francisco, State of California, and said vessel is now in the port of San Francisco in the Northern District of California, and within the jurisdiction of this honorable Court.

V.

That at all of the times herein mentioned, the said bark "Sumatra" was used by your petitioners in interstate and foreign commerce between ports and places upon and connected with the Pacific ocean.

VI.

That at all of said times the said bark "Sumatra" was a good, staunch and seaworthy vessel, properly and efficiently fitted for the voyage on which she was about to proceed, and commanded by a careful, competent and experienced master.

VII.

That on the fourteenth day of March, 1894, said bark "Sumatra" was lying near Antioch, in the Northern District of California, where she was made fast to a tug for the purpose of proceeding to San Francisco, and thence upon a voyage to Departure Bay, British Columbia. That one Patrick Curtin, then and there a member of the crew of said vessel, while on her trip to the port of San Francisco, fell through a hatchway into the hold of said vessel, whereby certain damage was occasioned to or incurred by him, but the same was without any fault or negligence upon the part of the master of said vessel or of these petitioners or of either of them, but was owing entirely to the negligence and carelessness of said Patrick Curtin himself.

VIII.

That the said accident to the said Patrick Curtin was not caused by the design or negligence of your petitioners or either of them; that the same happened, and the said damage resulting therefrom to said Patrick Curtin was done, occasioned and incurred without the privity or knowledge of your petitioners or either of them, and without any fault or negligence on the part of the master of said vessel.

IX.

That thereafter the said Patrick Curtin received such proper attendance and medical care as the nature of the voyage and the circumstances would permit, and also his wages to the end of the voyage for which he had been hired, after which time he was sent to the United States Marine Hospital at the port of San Francisco, where he remained until properly discharged therefrom.

X.

That nevertheless, on the fourth day of May, 18——, said Patrick Curtin did by his attorneys, ————, sue your petitioners in an action brought in the Superior Court in and for the city and county of San Francisco, State of California, and in the Judicial District of the United States in and for the Northern District of California, for damages in a sum amounting to $25,000, which said damages he charges and alleges in said complaint were occasioned and incurred by him by reason of said accident and fall through the hatchway of said vessel as aforesaid.

XI.

That your petitioners desire to contest their liability and the liability of said bark "Sumatra" for all loss or damage occasioned to or incurred by said Patrick Curtin by reason of his fall through said hatchway as aforesaid, and also to claim the benefit of limitation of the liability of your petitioners provided for in sections 4282 to 4289, inclusive, of the Revised Statutes of the United States as amended by the act of June 16, 1884, 23 Stats. at large, p. 57, chap. 121, sec. 18; and the act of June 19, 1886, 24 Stats. at large, p. 81, chap. 421, sec. 4; and your petitioners are now ready and willing and offer to give a stipulation with sureties for the payment into Court of the value of said bark "Sumatra" and freight pending at the time of said accident whenever the same shall be ordered.

XII.

That the claim made by the said Patrick Curtin by reason of the accident and damage to him as aforesaid, greatly exceeds in amount the value of

said bark "Sumatra," her tackle, apparel and furniture, and freight pending at the time of and immediately after the said accident and damage, and that of the several interests of your petitioners therein. At the time of and immediately after the happening of said accident said vessel and her freight then pending was of no greater value than the sum of $1,500.

XIII.

While not admitting but denying that they are under any liability for the loss or damage occasioned or incurred as aforesaid, and claiming the right in this Court to contest any liability therefor, either of themselves individually or of the said bark "Sumatra," your petitioners severally claim and are entitled to have limited their liability (if any liability shall hereafter be found to exist) to the amount or value of their interests, respectfully, in said bark "Sumatra," immediately after said accident and her freight then pending.

XIV.

Wherefore your petitioners pray that this Court will cause an appraisement to be had of the value of the interest of said petitioners respectively in said bark "Sumatra, her tackle, apparel, and furniture, at the time of said accident, towit, the fourteenth day of ——, 18——, and her freight then pending, and that a stipulation may be given by said petitioners, with sureties for the payment thereof into Court whenever the same shall be ordered, and will in compliance with such order issue a monition against said Patrick Curtin and ————, his attorneys, and all persons claiming damages for or

by reason of the accident hereinbefore mentioned, citing them to appear before this Court and make due proof of their respective claims at a time to be therein named. As to all of which claims your petitioners will contest thir liability and the liability of said bark "Sumatra," independently of the limitation of their liability claimed under sections 4282 to 4289, inclusive, of the Revised Statutes of the United States and the acts of Congress of June 16, 1884, and of June 19, 1886, hereinbefore mentioned.

That in case it shall be found that any liability exists upon the part of your petitioners, or either of them, on account of the loss or damage alleged to have accrued to said Patrick Curtin, then that such liability shall in no event exceed the value of the interests of your petitioners respectively in the said bark "Sumatra" at the time of said accident and the freight then pending, and that the moneys secured to be paid into Court as aforesaid, after payment of the costs and expenses, shall and may be divided pro rata among the several claimants in proportion to the amount of their respective claims. That in the meantime and until the final judgment of the Court shall be rendered herein, this Court shall make an order restraining the said Patrick Curtin and his attorneys and all other persons from the further prosecution of said suit in the Superior Court in and for the city and county of San Francisco, State of California, and of all or any suits against your petitioners, or either of them, in respect to any claims or loss or damage occasioned, incurred, or arising out of, or in consequence of the falling of said Patrick Curtin down said hatchway, either in the Courts of the State of California or in the United States Courts, or elsewhere, and

for such other and further relief as to the Court shall seem meet and proper.

ANDROS & FRANK,
Proctors.

(a) See Desty's Fed. Proc., sec. 52.

No. 69.

Petition for Limitation of Liability. (a)

In the District Court of, etc.

In the Matter of, etc. (See Form No. 67.)

To the Honorable, etc.

The petition of the Humboldt Lumber Manufacturers' Association respectfully shows:

I.

That at all the times hereinafter mentioned your petitioner was and ever since has been and still is a corporation duly created and existing under the laws of the State of California.

II.

That at all the times hereinafter mentioned your petitioner was the lessee and charterer of the steam tug "Printer."

III.

That the said steam tug "Printer" was of about one hundred and ten tons' burden gross measurement, and duly enrolled and registered according to the law in the United States customhouse at San Francisco, in the State of California, and within the said Northern District of California.

IV.

That at all the times hereinafter mentioned said steam tug "Printer" was used by your petitioner for the towage of vessels engaged in interstate and foreign commerce from the Pacific Ocean to Humboldt Bay, and from Humboldt Bay to the Pacific Ocean.

V.

That at all said times said steam tug "Printer" was a good, staunch and able vessel, well fitted in every respect with all machinery and appliances, of substantial quality, and all in prime order and condition, to fit her for towing vessels from the Pacific Ocean to Humboldt Bay, and from Humboldt Bay to the Pacific Ocean, and said "Printer" was properly and efficiently manned and commanded by an able and experienced master.

VI.

That on the sixteenth day of November, 1889, said "Printer," in her usual course and business within the admiralty and maritime jurisdiction of this Court, upon the Pacific Ocean made fast to the sailing schooner "Fidelity," a vessel duly enrolled at the customhouse in the port of Eureka, California, and started towing said schooner "Fidelity" to Humboldt Bay, and while towing said schooner upon said Pacific Ocean towards Humboldt Bay, without any fault or negligence upon the part of the master or crew of the said steam tug "Printer," but owing entirely to a peril of the sea, or to some mismanagement or negligence of the master or the crew of the said "Fidelity," said 'Fidelity" capsized and all aboard thereof perished, with all of her cargo and stores, and the personal effects of the master and crew became a total loss.

VII.

That the said loss of said "Fidelity" and of her cargo and crew was not caused by the design or negligence of your petitioner, but the same happened and the deaths, loss, damage, and destruction resulting therefrom to said "Fidelity," her master, crew, and cargo, was done, occasioned, and occurred without the privity or knowledge of your petitioners, and without any fault or negligence of the master or any of the crew of said "Printer."

VIII.

That nevertheless (states commencement of three suits in State Court by the widow and children of the master of the "Fidelity," by the widow and children of an employee on the schooner, and by an administrator of one of the crew for damagees in sums amounting in the aggregate to the sum of seventy-five thousand dollars, claimed to have accrued by reason of the loss of the said schooner "Fidelity," charging and alleging such damages to have accrued through and by the negligence of the master of said steam tug "Printer").

IX.

(See clause XIII of Form No. 68.)

(a) The "Printer," 44 U. S. App. 434; 73 Fed. Rep. 239; see Desty's Fed. Proc., sec. 52.

No. 70.

Libel for Personal Injuries. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of Timothy Wallace, of the city and county of San Francisco, State of California, stevedore, against the Mexican steamer "Alejandro," of which one De La Mata is now, or lately was, master, her tackle, apparel and furniture, and all persons lawfully intervening for their interest in the same, in a cause of tort and damage for personal injuries, civil and maritime, alleges as follows:

I.

That on or about the fifteenth day of November, 1887, the said steamer "Alejandro" was lying alongside of the Howard Street wharf No. 2 in the bay of San Francisco, within the jurisdiction of this Court, for the purpose of taking on coal, and your libelant was one of a number of stevedores employed to put the coal into said vessel.

II.

That in the course of his employment your libelant was, upon the fifteenth day of November 1887, called upon to assist in raising the cargo-plank belonging to said vessel out of the hold thereof, when, by reason of the breaking of rotten, unsound, small and defective ropes attached to said cargo-plank and constituting a portion of said ship's furnishing, the said cargo-plank, without any fault or negligence of the libelant herein and wholly by negligence of the owners and master of said vessel, fell upon the leg of the libelant herein, crushing the bones of his knee and crippling him for life.

III.

That the master of the vessel, De La Mata, well knew the unsound, unsafe, and rotten condition of the said ropes, and had his attention specially called to their condition a short time prior to the accident, but the said master willfully and negligently omitted and refused to replace the said defective rope with better ones, and thereby caused the injury alleged.

IV.

That your libelant had no knowledge or means of finding out the condition of said ropes, and was thus through the negligence of the master of the vessel placed in a dangerous position and seriously injured, crippled, and maimed, confined to his bed for several months, and made to suffer great bodily pains and mental anguish, to his great damage, in the sum of ten thousand dollars.

V.

That the said steamer "Alejandro" is now in the bay of San Francisco, within the jurisdiction of this honorable Court.

VI.

(Conclusion, Form No. 42 b.)

(a) The "Alejandro," 15 U. S. App. 98; 56 Fed. Rep. 621; see Desty's Fed. Proc., sec. 52.

No. 71.

Libel for Personal Injuries. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel and complaint of Louis A. Pederson, of said District, mariner, against the said defendant, J. D. Spreckels & Brothers Company, in a cause of damage for personal injuries suffered, alleges as follows:

I.

That on all the dates and times herein mentioned the said J. D. Spreckels & Brothers Company was, and now is, a corporation organized and existing under and by virtue of the laws of the State of California, and had and now has its principal place of business in the city and county of San Francisco, within the District of the above-named honorable Court.

II.

That on or about the seventh day of January, 1895, the libelant was employed as mate on board the American schooner "S. Danielson," which said schooner, with libelant and her master and crew, were engaged in carrying material from a steamship called the "Crown of England," which said steamship was on shore on the island of Santa Rosa, off the coast of California, and the said defendant herein was at said times operating and the owner of steam tug known as the "Fearless,' which said steam tug was then and there engaged in towing the said schooner "S. Danielson" to and from the said steamer "Crown of England" to harbor and elsewhere, as occasion might require it.

III.

That on said day the said steam tug went alongside of the said schooner, and obtained from her a tow-line, with which to tow the said vessel from the bay of Santa Rosa to the said steamship, the "Crown of England," and libelant and other members of the crew of said vessel passed to the said steam tug a new five-inch manila line, which said line was made fast to the said tug by one end, and the other end was made fast to the said schooner, with about forty fathoms paid out, and that space intervening between the said steam tug and the said schooner, when the said steam tug went ahead, to tow the said schooner as aforesaid.

IV.

That those having the said steam tug in charge so carelessly, negligently, and unskillfuly performed their duty in managing the said tug and towing the said schooner in this, that instead of towing at a reasonable speed, and such a speed that the said line was capable of withstanding the strain put thereon, they went ahead full speed, and although libelant and other members of the crew of the said "S. Danielson" and the master thereof called to the said tug and those on board to go slower, it still kept up the said speed and towed at such an excessive speed that the said tow-line was pulled in two, and also a cast-iron chock on the said schooner through which the said tow-line passed, and by reason thereof, and the negligence, carelessness, and unskillfulness of the said men in charge of the said towboat as aforesaid, the libelant's leg became and was caught in the said tow-line, and so injured and damaged that by reason thereof he has been compelled to have the same amputated below the knee, and he is now and forever

will be prevented from following his occupation as a seaman, or any other occupation, all to his damage in the sum of twenty thousand ($20,000.00) dollars.

V.

That libelant was not in the employ of defendant when he received the said injuries, and that the persons in charge of the said towboat were in defendant's employ at said time, and libelant suffered great physical and mental anguish by reason of the said injuries, and still suffers the same pain.

VI.

(Conclusion, Form No. 42 a.)

(a) Pederson v. Spreckels, 87 Fed. Rep. 938; see Desty's Fed. Proc., sec. 52.

No. 72.

Libel Salvage. (a)

CHARLES P. DOE, Managing Owner of the Steamer "Wecott," for Himself and Others, Co-owners of said Vessel. ALBERT MEYER, Managing Owner of the Steamer "Emily," for Himself and Others, Co-owners of said Vessel,

Libelants,

vs.

The British Steamship "BAWNMORE," her Engines, Boilers, Tackle, Apparel, Furniture, and Cargo.

To the Honorable, etc.

The libel of Charles P. Doe, as managing owner of the steamer "Weeott," and Albert Meyer, as managing owner of the steamer "Emily," suing for themselves and all others interested in said steamers, against the British steamship "Bawnmore," her cargo, boilers, engines, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of salvage, civil and maritime, allege:

I.

That on the seventh day of July, 1893, the British steamer "Bawnmore," carrying a cargo whose value and character is unknown to these libelants, sailed from the port of San Francisco for Nanaimo, in British Columbia, and on the following evening, about six o'clock, P. M., of July eighth, said steamer ran aground upon a reef off or near Point Gorda, on the California coast, about 180 miles north from San Francisco; that by so running aground said steamer stove a hole in her bows, and in backing off the rocks she broke her propeller and disabled her steering gear, becoming wrecked and unmanageable, in a sinking condition.

II.

That shortly before midnight on July eighth the steamers "Emily" and "Weeott" simultaneously came up to the "Bawnmore." The steamer "Emily" was then on her voyage from San Francisco to Coos Bay, Oregon, carrying a cargo of general merchandise. The "Emily" was of the value of $40,000, and was partly insured, and her cargo was worth upwards of $10,000. The steamer "Weeott" was then upon her voyage from Eel River to San Francisco, carrying a

miscellaneous cargo of produce, livestock, and merchandise. The steamer "Weeott" was worth $40,000, partly insured, and her cargo was worth about $10,000.

At the time that the steamers "Emily" and "Weeott" came alongside her as aforesaid, the "Bawnmore" had been abandoned by her crew and master, who were all in small boats in the vicinity, waiting to be picked up. The "Bawnmore" at that time was about two miles off shore, and was in an entirely disabled and sinking condition, with her fires out and pumps stopped, and her machinery useless and broken. The "Bawnmore's" master declared to the masters of the "Emily" and the 'Weeott" that it was useless to attempt to save the "Bawnmore," and that she would sink in two hours' time. The master and crew of the "Bawnmore" were thereupon taken on board the "Emily" and "Weeott" as passengers at their own request, and each of said vessels, the "Emily" and "Weeott," made fast its hawser to the "Bawnmore" and towed her from said place off Point Gorda to Caspar Creek, a point on the California coast about one hundred and thirty miles from San Francisco, and about fifty miles south of said point, where the "Bawnmore" was so picked up by them. That said Caspar Creek was the nearest point to which the "Bawnmore" could be taken for temporary repairs. That at the time of reaching Caspar Creek the water in the "Bawnmore" was nearly up to the main deck, and she was at the point of sinking. That the masters of the steamers "Emily" and "Weeott" at once beached the "Bawnmore" at Caspar Creek and patched and calked the hole in her bows so as to render her watertight, and then towed her off the beach and pumped her out. That Caspar Creek is a small settlement, with only an open roadstead, and with no

facilities for repairing machinery or for repairing the hull of the steamer, and that no such facilities existed nearer than the port of San Francisco. That accordingly, as soon as she could be safely moved, to wit, on July 12, 1893, the said steamers "Emily" and "Weeott" again took the "Bawnmore" in tow and towed her from Caspar Creek to the bay of San Francisco, where she now lies in safety. That they had no other assistance in so towing than that of the tug "Rescue," which was chartered by these libelants for that purpose, and which assisted in towing the "Bawnmore" from Caspar Creek to San Francisco.

That in order to save the "Bawnmore" aforesaid it was necessary for the said steamers "Emily" and "Weeott" to deviate from their respective courses and they were exposed to great danger in approaching said vessel and in lying there while the beaching and repairing of the "Bawnmore" was being accomplished, and that they were further exposed to great peril and expense in towing the "Bawnmore" from the point where she was picked up to Caspar Creek, and from Caspar Creek to San Francisco.

That the value of the steamer "Bawnmore" at this time was about $150,000, and the value of her cargo, if any, is unknown to these libelants. That the services aforesaid were of a salvage nature and of great value to the steamer, which would have become a total loss, and had been abandoned by her crew and master and that said services entitled these libelants to such reward as is usually granted by the court of admiralty in such cases.

III.

That the said steamship "Bawnmore" is now lying in the port of San Francisco in the Northern District of California.

IV.

(Conclusion, Form No. 42 b.)

(Verified, etc.)

PAGE & EELLS,
Proctors for libelants.

(a) Doe v. The "Bawnmore" (not reported); see Desty's Fed. Proc., sec. 52.

No. 73.

Libel in Intervention of Crew of Rescuing Steamer in Case of Salvage. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of intervention of A B C D, etc., and six seamen and a deck-boy, all members of the crew of the American steamer "Emily," at all the times hereinafter mentioned, against the British steamship "Bawnmore," her engines, boilers, tackle, apparel, furniture, and cargo, now in the custody of the United States marshal for the Northern District of California, by virtue of process issued out of the above-named Court in the above-entitled action and against the libelants in said action and all persons intervening for their interest therein, in a cause of salvage, civil and maritime, allege:

I.

That on or about the eighth day of July, 1893, the British steamship "Bawnmore," while on a voyage from the port of San Francisco to British Columbia, ran aground upon a reef off and near Port Gorda on the coast of California, and thereby stove a hole in

her bows, and in backing off from said reef broke her propeller and disabled her steering gear, and became wholly disabled and unmanageable, and was in a sinking condition and in such danger of foundering that she was on said day abandoned by her master and her other officers and her crew and all other persons then on board of her, and became and was derelict.

II.

That on said day the said steamer "Emily" was on a voyage from the said port of San Francisco to Coos Bay, Oregon, and that the libelants who are named in this libel of intervention were on board and in the service of said steamer "Emily" in the capacities and at the monthly wages hereinafter set opposite their names, towit: A, chief engineer, $125.00; B, first mate, $75.00; etc., etc.; and that the said six seamen, who are not named in this libel of intervention, were on board and in the service of the said steamer "Emily" as seamen at the monthly wages of $40.00 each, and that the said deckboy, who is not named in this libel of intervention, was on board and in the service of said steamer "Emily" as a deck-boy at the monthly wages of $——.

III.

That shortly before midnight on said day the said steamer "Emily," with all of the libelants in this libel of intervention on board as aforesaid, came up to the said steamship "Bawnmore," the said steamship "Bawnmore" then being disabled and unmanageable, and in a sinking condition and in danger of foundering, and abandoned and a derelict as aforesaid, and with the assistance of all the libelants in this libel of intervention and of the officers and crew

of the American steamer "Weeott," and said steamer "Weeott," towed said steamship from the high seas near said reef to Caspar Creek, California, about fifty miles distant from the place where said towage began, and about one hundred and fifty miles from the port of San Francisco.

That upon the arrival of said vessels at said Caspar Creek the said steamship "Bawnmore" was beached and the hole in her bows was made temporarily water-tight, and she was then towed off the beach and pumped out, and that thereafter she was towed by the said steamer "Emily," assisted by the said steamer "Weeott" and the steam tug "Rescue," from said Caspar Creek to the port of San Francisco, where she now lies in safety. That all of the libelants in this libel of intervention assisted in all of the services to said steamship "Bawnmore" aforesaid, and that while so engaged they were exposed to great danger.

IV.

That the said steamship "Bawnmore," when brought to the port of San Francisco as aforesaid, was and is of the value of $150,000, or thereabouts, and that her said cargo is of some value, but of what value the libelants in this libel of intervention are ignorant.

V.

That had it not been for the services so rendered to said steamship "Bawnmore," she and her said cargo would, in consequence of the injuries received by her as aforesaid, have been wholly lost and destroyed.

VI.

That all and singular the premises are true, etc.

Wherefore, libelants in this libel of intervention pray that upon the filing of this libel of intervention

process may issue, etc.; that this Honorable Court will be pleased to decree the payment to libelants and each of them of a reasonable and proper salvage for the services rendered by them as aforesaid, with costs.

(Prayer for condemnation, sale, and further relief, see Form 42 b.)

_____,

Proctor for intervening libelants aforesaid.

(a) Doe v. The "Bawnmore" (not reported); see Desty's Fed. Proc., sec. 52; Ad. R. 34.

No. 74.

Libel of Intervention. (a)
(Salvage.)

[Title of Court and Cause.]

The libel of intervention of A, B, C, etc., against the steamship "Bawnmore," her tackle, apparel, and furniture and against all persons lawfuly intervening for their interest therein, in a cause of salvage, civil and maritime, allege:

I.

That on or about the eighth day of July, 1893, the British steamship "Bawnmore," while on a voyage from the port of San Francisco to Nanaimo in British Columbia, ran upon a reef near Point Gorda, on the coast of California, and thereby became wholly disabled and unmanageable, and was reduced to a sinking condition and in danger of foundering, and was, on said day, abandoned by the officers and crew thereof.

II.

That on or about the said eighth day of July, 1893, the steamer "Weeott," then bound on a voyage from Eel River to San Francisco, with these libelants on board thereof as a part of the company thereof, and serving in the capacities and at the wages hereinafter mentioned, that is to say, A, master, at the rate of $—— per month; B, first officer, at the rate of $—— per month; C, acting chief engineer, at the rate of $—— per month (etc., names, capacities, and wages); and H, master of the schooner "Emily," at the rate of $—— per month.

III.

That shortly before midnight on the eighth day of July, 1893, came up to the said steamship "Bawnmore" (etc.; relate circumstances attending salvage up to the bringing of the derelict to a port of safety).

IV.

That said steamship "Bawnmore," when brought to the port of San Francisco as aforesaid, was, and is, as these libelants are informed and believe, of the value of $150,000, or thereabouts, but what the value of the cargo of said vessel, if any, was these libelants are ignorant.

V.

That had it not been for the services so rendered to said steamship "Bawnmore," as aforesaid, she and her cargo, if any, would, in consequence of the injuries received by her and the condition to which she was reduced as aforesaid, have been, as these libelants verily believe, totally lost and destroyed.

VI.

The said steamship "Bawnmore" is now within the Northern District of California.

VII.

(Conclusion, Form No. 42 b, with prayer that this honorable Court will be pleased to decree the payment to them and each of them a proper and reasonable salvage for the services rendered by them, with costs, etc., as in Form No. 42 b.)

PAGE, EELLS & WHEELER,
ANDROS & FRANK,
Proctors for intervenors.

(a) Doe v. The "Bawnmore" (not reported); see Desty's Fed. Proc., sec. 52; Ad. R. 34.

No. 75.

Libel for Wages. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel of Thomas Martial, etc., etc., seamen, against the ship "Eclipse," her tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein, in a cause of wages, civil and maritime, alleges as follows:

I.

That at all the times herein mentioned the said ship "Eclipse" was and now is an American vessel, and at the time of the filing of the libel herein was and is lying in the port of San Francisco and within the District of this honorable Court.

That on the fifth day of September, 1892, the libelants were hired by one ——— Peterson, who was and is the master of said vessel, to serve as seamen on said ship on a voyage from San Francisco, California, where the said vessel was then lying, to Nanaimo, British Columbia, and return to said San Francisco, at the rate of wages of $25.00 per month, and that libelants entered into the service of said vessel on or about said day and performed the said voyage and returned to said San Francisco in pursuance thereof, where they arrived and were discharged from further service on said ship on the thirty-first day of October, 1892.

II.

That there is now owing them by said vessel on account of their wages for their services as aforesaid the following amounts: Thomas Martial, $15.00, etc., etc., which said amounts the master and owners of said vessel have refused to pay.

III.

(Conclusion, Form No. 42 b.)

(a) Martial v. The "Eclipse," 15 U. S. App. 205; 60 Fed. Rep. 105; see Desty's Fed. Proc., sec. 52.

No. 76.

Libel for Pilotage Outward. (a)

(Commencement, see Forms, 41a, 41b, 41c, 41d), in a cause of pilotage, civil and maritime, alleges as follows:

I.

That some time in the month of ——, 18—, the said ship "———," being then in the port of ————, the said (master or owners, as the case may be), by ——self, or his (or their) agents, employed the libelant to take the said vessel to sea from the port of ——— as pilot. That accordingly the libelant went on board said vessel and took charge of the same and did pilot her to sea on or about the ——— day of ———— aforesaid.

II.

That the libelant is a regular pilot and did his duty faithfully and according to the best of his ability as the pilot of said vessel, and is entitled to the regular and lawful fees for such service, which amount to the sum of $———, which sum the said ——— has (or have) admitted to be due and promised to pay from time to time, but which is still due and unpaid.

(Conclusion as in Form No. 42a.)

(Variation in Above Libel.)

Pilotage Inward.

I.

That some time in the month of ————, 18—, the said ship "————," being off the (describe locality), the libelant boarded her and offered his services as a pilot to conduct her to her port of destination, to wit, ————; that his said offer was accepted by the said ————, master of said ship, and accordingly the libelant took charge of said ship, and did pilot her into or (describe course), on or about the ——— day of ———, 18—.

(a) See Desty's Fed. Proc., sec. 52.

No. 77.

Libel for Pilotage Offered and Refused. (a)

(Commencement as in Form No. 76.)

I.

That some time in the month of ———, 18—, the said ship "———," being off the (describe locality), the libelant spoke her and offered his services as a pilot to conduct her to her port of destination, towit, ———.

That the said vessel was at that time without a pilot, and said tender of services was made while she was under way; that said offer and tender of services were refused by said ship and by the persons in charge of her, and she proceeded on her voyage to her destination without a pilot on board.

II.

That the libelant is a regular pilot, and that by reason of the premises he is entitled under the laws of the State of ———, to wit, under (state the law) to the regular and lawful fees arising from the offer and tender of his services as aforesaid, as prescribed by said (statute) in all cases where said offer and tender are refused, amounting in this case to the sum of $———, payment of which said sum has been refused and the whole thereof remains due.

(a) See Desty's Fed. Proc., sec. 52.

No. 77.

Pilotage. (a)

To the Honorable, etc.

The petition of A B respectfully shows that he is and at all the times hereinafter mentioned was a duly licensed and qualified pilot of the port and harbor of ————, under the laws of the United States and of the State of ————, and that, as such pilot, on ——, 18—, he spoke the ship "————," an American vessel registered at the custom-house of said port of from said port on an outward voyage to the port of ————, and then and there offered and tendered to said ship and to the master thereof, X Y, his services as such pilot, to take said ship out of said port and harbor of ———— and to the open sea.

That the said master of said ship "——" heard the petitioner and his offer of services aforesaid and then and there refused to employ him as such pilot or to accept his services to pilot said ship "——" out of said port and harbor and from her moorings therein and to the open sea.

That at said time said ship drew 23½ feet of water and that her tonnage was 1693 tons.

That by virtue of the laws of the State of ———— in such cases made and provided, the petitioner, upon the speaking and refusal aforesaid, became and was entitled to collect and receive from said ship and from the owners thereof the sum of $2.50 per foot of draught for each foot drawn by said ship, amounting to the sum of $58.75, and the sum of 2 cents for each ton of the tonnage of said ship, amounting to the sum of $33.86, or in the aggregate the sum of $92.61.

That the bill for said services, a copy of which is hereto annexed as an exhibit, was duly presented by this libelant to the master aforesaid for acceptance and was by said master refused.

That subsequently payment was by this petitioner demanded of said master of said ship but that no part of said sum has been paid to this petitioner; on the contrary, the whole amount thereof remains unpaid.

And this libelant further avers that the above-named demand constitutes a lien upon the said ship "——," her tackle, apparel, and furniture, under and by virtue of the laws of the State of ————.

Wherefore the libelant prays that process in due form of law may issue against the said ship "——," her tackle, apparel, and furniture, and that all persons claiming any right, title, or interest in said ship may be cited to appear and answer under oath all and singular the matters aforesaid, and that this honorable Court would be pleased to decree the payment of the aforesaid damages to libelant, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

Subscribed and sworn, etc.

————————,

Libelant.

————————,

Proctors.

(a) Freeman v. "The Undaunted," 37 Fed. Rep. 662; see Desty's Fed. Proc., sec. 52.

No. 78.

Libel for Towage. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The libel and complaint of A, of San Francisco, owner of the steam tug "Hercules," against the American bark "Queen of the Seas," of which Peter McGinty now is or late was master, against the said bark, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract of towage, civil and maritime, alleges as follows.

I.

That said libelant is now and was at the time hereinafter mentioned owner of the steam tug "Hercules."

II.

That on or about the thirteenth day of January, 1887, the said Peter McGinty, master of the said bark, engaged the said steam tug "Hercules" to tow said bark from her moorings in the bay of San Francisco to wharf No. 6 at Benicia in said bay, and that the steam tug, in pursuance of her engagement, took charge of said bark and safely towed her to said wharf No. 6 at Benicia aforesaid, where she now lies.

III.

That in consideration of the services in the next preceding article alleged there has accrued and become due to the libelant, owner as aforesaid, from the owners of said bark and from the master thereof the sum of $120.

IV.

That neither the said Peter McGinty, master as aforesaid, nor the owners of the said bark have paid said libelant the said sum of $120, or any part thereof, though requested so to do.

(Conclusion, Form No. 42 b.)

(a) See Desty's Fed. Proc., sec. 52.

No. 79.

Libel in Rem to Obtain Possession of Ship. (a)

To the Honorable, etc.

The libel of A B, of, etc., owner of the ship "Union," her tackle, apparel, and furniture, against all persons intervening for their interest therein, in a cause of possession, civil and maritime, alleges as follows:

I.

That he is the true and only owner of the ship "Union," her tackle, apparel, and furniture, and, being such owner, on or about the —— day of ——, 18——, appointed one M master of said vessel, to navigate and sail her for him at the wages agreed upon between them, and the said M continued to be such master until the —— day of ——, last past, when the libelant discharged him as master and appointed another master in his place.

II.

That when the new master so appointed as aforesaid went on board said ship by order of said libelant to enter upon his duties as such master the said M

refused to give up possession of said ship or the papers thereof to the said new master or to this libelant, who have demanded the same, to the great damage of the libelant.

III.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Whereupon the libelant prays that process in due form of law, according to the course of this honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that the said M may be personally cited to appear and answer all the matters aforesaid, and that the said vessel, her tackle, apparel, and furniture, may be delivered to this libelant, and that the said M may be condemned to pay to the libelant his damages and costs in the premises, and that he may have such other and further relief in the premises as in law and justice he may be entitled to receive.

(a) See Desty's Fed. Proc., sec. 52.

No. 80.

Libel in Rem to Obtain Possession of Merchandise.

To the Honorable, etc.

The libel of A B, of, etc., against nine cases of merchandise marked A 1 to 9, and against Z, master of the ship or vessel named "Union," in a cause of possession, civil and maritime, alleges as follows:

I.

That heretofore, while the said vessel was lying in the port of Liverpool in England and about to sail for the port of Philadelphia, John Brown of Liverpool, aforesaid, shipped on board said vessel, consigned to the libelant, nine cases of merchandise marked A 1 to 9, and the said master signed the usual bill of lading for the same, whereby he agreed to deliver the same to the libelant in New York on payment of the freight for the same at the rate of twenty cents per cubic foot.

II.

That, the said ship having arrived in the said port of New York, the libelant paid to the said master his freight on said merchandise and demanded the delivery thereof, but the said master refused to deliver the same to him unless the libelant would pay $150 as an average contribution, which the libelant was not bound to pay, not being liable therefor, and the said master still refuses to deliver to him the said nine cases and each of them, which are of the value of $2,000 and upwards, to the great damage of the libelant.

III.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable Court.

Wherefore the libelant prays that process in due form of law according to the course of this honorable Court in causes of admiralty and maritime jurisdiction may issue against the said nine cases of merchandise, and that the said Z may be personally cited to appear and answer on oath all the matters aforesaid, and that the said merchandise may be delivered to the libelant, and that the said Z may be

condemned to pay to the libelant his damages and costs in the premises, and that he may have such other and further relief in the premises as in law and justice he may be entitled to receive.

(a) See Desty's Fed. Proc., sec. 52.

No. 81.

Libel, Petitory. (a)

To the Honorable, etc.

The libel and complaint of A B and C D, merchants, against the ship "Union" (whereof M late was master), her tackle, apparel, and furniture, and against O P and R S, all of ————, merchants, and also against all persons lawfully intervening for their interest in said ship in a cause of possession, civil and maritime, alleges as follows:

I.

That the libelants are the true and lawful owners of the said ship "Union," a vessel of about twelve hundred tons burden, now lying in the port of New York.

II.

That the possession of the said ship is now and has been since the first day of April now last past wrongfully withheld from the libelants by the said O P and R S, on an alleged ground of title to the possession of the said vessel.

III.

That the said claim of title to the possession of the said vessel is entirely false and invalid, the said title

depending upon and being referred to a pretended sale by the said M, master, which sale, if it ever in truth and fact took place, was wholly unauthorized by the libelants as owners of the said ship, was without any necessity, without any legal survey or condemnation of the said ship, in violation of the duty of the said M as master, and in fraud of the rights of the libelants, and that therefore the libelants aver the said sale (if it ever took place) is utterly void.

IV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

Wherefore the libelants pray that process in due form of law according to the course and practice of this honorable Court in causes of admiralty and maritime jurisdiction may issue against the said ship "Union," her tackle, apparel, and furniture, and that the said O P and R S and all other persons having or pretending to have any right, title, or interest in the said ship may be cited to appear before this honorable Court and show cause why possession of the said ship shall not be delivered to the libelants, and that this honorable Court will be pleased to decree that the possession of the said ship be delivered to the libelants and to administer such other and further relief as shall to law and justice appertain, and also to condemn the said O P and R S and all persons intervening for their interest in the said ship in costs.

(a) See Desty's Fed. Proc., sec. 52.

No. 82.

Libel of Information. (a)
(U. S. R. S., sec. 1956.)

In the District Court of the United States of America, District of Alaska.

Of the May Term, in the Year 1891.

THE UNITED STATES
v.
The Schooner "LA NINFA." } U. S. R. S., sec. 1956.

To the Honorable, etc.

The libel of information of Charles C. Johnson, attorney of the United States for the district of Alaska, who prosecutes on behalf of the United States, and being present in court in his proper person in the name and on behalf of the said United States, against the schooner "La Ninfa," her boats, tackle, apparel, furniture, and cargo, and against all persons intervening therein, in a cause of forfeiture, alleges and informs as follows:

I.

That said C. L. Hooper, captain in the United States Revenue Marine service, duly commissioned by the president of the United States, then and there commanding the United States revenue cutter "Corwin," and on special duty in Bering sea, heretofore and on or about the fourteenth day of July, 1891, at or near the northwest point of St. Paul's Island in said Bering sea, and about ten miles south by west one-half west on the high seas, and within the district of Alaska, and within the district of this Court seized the ship or vessel commonly called a schooner and known as the "La Ninfa," her boats, tackle, apparel, furniture, and cargo, being the property of

some person or persons to the said attorney unknown, and brought her to Sitka in the district of Alaska, where she now is as forfeited to the United States for the following, among other causes.

That the said vessel, her captain, officers, and crew, at said time were engaged in killing fur seals within the limits of Alaska Territory and in the waters thereof, in violation of section 1956 of the Revised Statutes of the United States and of other acts of Congress and of the proclamations issued by the President of the United States thereunder; and the said attorney saith that all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable Court, and that by reason thereof, and by force of the statutes of the United States in such cases made and provided, the aforementioned and described ship or vessel, her boats, tackle, apparel, furniture, and cargo, became and are forfeited to the use of the said United States of America. Wherefore the said attorney prays that the usual process and monition of this honorable Court issue in this behalf and that all persons interested in the aforementioned ship or vessel may be cited in general and special to answer the premises, and all due proceedings being had, that the said ship or vessel, her boats, tackle, apparel, furniture, and cargo, may for the causes aforesaid and others appearing be condemned to the use of the United States of America, according to the form of the statutes of the United States in such cases made and provided.

CHARLES C. JOHNSON,
United States attorney for the District of Alaska.

(a) The "La Ninfa," 75 Fed. Rep. 513; 44 U. S. App. 48; see Desty's Fed. Proc., sec. 52.

No. 83.

Cross-libel by Way of Answer. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The answer of Z, of ————, owner of the brig "————," to the libel of A, of the same place, master of the steamship "————," in a cause of damage sur collision, civil and maritime, to serve also by way of cross-libel at the suit of this respondent against the said steamship "————," her engines, boiler, machinery, boats, tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, alleges as follows:

(Answer the allegations of the libel and state the facts on which respondent s claim is based and the damages sustained.)

* * * * * * * * * * *

The said steamship "————" is now in the port of ————, within the district of ————.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable Court.

Wherefore this respondent and libelant prays that this honorable Court will pronounce against the original libel and dismiss the same with costs. He further prays that process of attachment in due form etc. (Conclusion, Form No. 42 b.)

(a) see Ad. R. 53.

No. 84.

Interrogatories Annexed to a Libel in Rem. (a)

Interrogatories to be answered by any claimant of the tug-boat "Pilot," mentioned in the annexed libel:

1. Who are the owners of the tug-boat "Pilot" and who were the owners on May 5, 1891, and for thirty days prior thereto?

2. Who was the master of the said tug-boat?

3. At what foreign port or place is said tug-boat registered and at what foreign port or place does she belong?

4. At what port or place did said tug-boat "Pilot" first commence towing the said bark "Valley Forge"?

(a) The "Pilot," 51 Fed. Rep. 437; 53 Fed. Rep. 11; 7 U. S. App. 188; see Ad. R. 23.

Section V.

CLAIMS.

No. 85.

Claim of Owner. (a)

[Title of Court and Cause.]

And now O, intervening for the interest of himself and P and Q, trading as O, P & Co., appears before this Court and makes claim to the said ship "———," her tackle, apparel, and furniture, as the same are attached by the marshal under process of this Court at the instance of A, and the said O avers that the firm above-named was in possession of the said ship at the time of the attachment thereof and that the per-

sons above-named are the true and bona fide owners of the said ship, and that no other person is the owner thereof.

Wherefore he prays (a) to be admitted to defend accordingly.

(a) Or, that this honorable Court will be pleased to decree to him a restitution of said ship, her tackle, apparel, and furniture, and otherwise right and justice to administer in the premises.

Subscribed and sworn to before me this —— day of ——, 18—.

(a) See Ad. R. 26 and 55.

No. 86.

Claim to Vessel and Cargo.

[Title of Court and Cause.]

To the Honorable, etc.

The claim of ————, to the British steamship "Bawnmore," her engines, boilers, tackle, apparel, and furniture and cargo, now in the custody of the marshal of the United States for the Northern District of California, at the suit of Charles P. Doe et al., A et al., etc. alleges:

That he is the true and bona fide owner of the said steamship, her engines, boilers, tackle, apparel, and furniture, and cargo, and that no other person is owner thereof.

Wherefore this claimant prays that this honorable Court will be pleased to decree a restitution of the same to him and otherwise right and justice to administer in the premises.

(Verification.)

No. 87.

Claim to Cargo. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The claim of Stauffer & Co., a partnership doing business at San Francisco in said district, to the cargo of sulphur of the British vessel called "Elmbank," now in the custody of the marshal of the United States for the said Northern District of California, at the suit of Thomas Price, alleges:

That they are the true and bona fide owners of the said cargo of said vessel and that no other person is owner thereof.

Wherefore these claimants pray that this honorable Court will be pleased to decree a restitution of the same to them and otherwise right and justice to administer in the premises.

ANDROS & FRANK,
Proctors for claimants of cargo.

(a) The "Elmbank," 69 Fed. Rep. 104.

No. 88.

Claim of Owners of Part of Cargo Attached.

[Title of Court and Cause.]

And now L, intervening for the interest of himself and M, copartners trading as L & M, of ———, merchants, etc., appears before the Court and makes claim to (describe the cargo claimed), part of the cargo laden on board the ship "———," as the same is attached by the marshal under process of this Court at the instance of A, and the said L avers that

the persons above named are the true and bona fide owners of the said ————, and that no other person is the owner thereof.

Wherefore he prays (see Form No. 87).

Subscribed and sworn, etc.

No. 89.

Claim of Owner by Agent. (a)

[Title of Court and Cause.]

To the Honorable ————, Judge of the above-entitled Court:

J. G. ————, of the city of Portland, in the District of Oregon, for and on behalf of the Oregon Railway & Navigation Company, and E. M., receiver thereof, the owner of the vessel called the "Oregon," her tackle, apparel, and furniture, intervening for interest in said vessel, her tackle, apparel, and furniture, appears before this honorable Court, and claims said vessel, her tackle, apparel, and furniture, and states that the Oregon Railway & Navigation Company is the true and bona fide owner thereof; that E. M. is the duly appointed and acting receiver of said Oregon Railway & Navigation Company, appointed by order of this Court, and as such receiver has now the custody of said vessel, and that affiant is assistant to said receiver, who is at this time without the District of Oregon. And the said J. G., as assistant receiver to the said E. M., receiver of the Oregon Railway & Navigation Company, and on behalf and in the name of said receiver, prays (see forms of prayer, No. 87).

J. G.

The said J. G., being first duly sworn, deposes and says that no other person except the said Oregon Railway & Navigation Company are owners of said vessel above named, her tackle, apparel, and furniture, or of any part thereof, and that no other person except said Oregon Railway & Navigation Company and the said E. M., as receiver thereof, has any right or control over said vessel, and he further says that he is duly authorized by the said owners to put in the above claim. J. G.

Sworn this —— day of ———, before me, etc.

(a) 45 Fed. Rep. 82; 73 Fed. Rep. 846; 158 U. S. 186, 211; 48 U. S. App. 430.

No. 90.

Claim of Owner by Master. (a)

[Title of Court and Cause.]

District of————, }
———— Division. } ss.

To the Honorable ————, Judge of the District Court of the United States for said District:

J.—— P. G——, master of the steamboat "Eugene," now within the District of ————, for and on behalf of Yukon Transportation Company of Portland, Oregon, owner of the vessel called the "Eugene," her tackle, apparel, and furniture, intervening for interest in said vessel, her tackle, apparel, and furniture, appears before this honorable Court and claims said vessel, her tackle, apparel, and furniture, and states that Yukon Transportation Company of Port-

land, Oregon, is the true and bona fide owner thereof. And thereupon the said claimant prays (see forms of prayer No. 87.)

J. P. G.

The said J.—— P. G——, being duly sworn, deposes and says that no other persons except the said Yukon Transportation Company of Portland, Oregon, is owner of the said vessel, her tackle, apparel, furniture, or any part thereof, and that this affiant is master of said vessel, and the lawful bailee thereof on behalf of said owner.

J. P. G.

Subscribed and sworn to before me this ———.

———,

Notary Public.

(a) The "Eugene," 83 Fed. Rep. 222. Ad. Rule 26.

No. 91.

Claim on Petition for Limitation of Liability.

[Title of Court and Cause.]

Answer of Henry Axton.

To the Honorable, etc.

And now comes Henry Axton and for answer to said petition and claiming damages in the sum of $1,200 for a loss of a one-sixteenth interest in the schooner "Fidelity," caused by the carelessness and negligence of said Humboldt Lumber Company and their agents and servants in towing said schooner across Humboldt bar, whereby said schooner was totally lost.

And the said Henry Axton now appears before said Court and files his claim therein in response to a certain monition issued out of said Court, giving notice to all parties claiming damages by reason of the loss of the said schooner to present their claims on or before the third day of February, 1891, and for said answer and in support of his right to maintain such claim alleges:

I.

That the defendant said Humboldt Lumber Company is and was at all times hereinafter mentioned duly incorporated under the laws of the State of California, and having its principal place of business in the city of Eureka, California, and that said corporation managed, operated, and controlled a steam tugboat called the "Printer," which it used for the purpose of hire to pilot and tow vessels from the Pacific Ocean over and across Humboldt bar into the Humboldt bay, and from the Humboldt bay over and across Humboldt bar into the Pacific Ocean.

II.

That on the sixteenth day of November, 1889, the said schooner "Fidelity" arrived at a point in the Pacific Ocean about ten miles distant from Humboldt bay, and that said defendant, operating, managing, and controlling said steam-tug, "Printer" as aforesaid, then and there undertook and agreed to safely pilot and tow said schooner over and across said bar into said Humboldt bay and then and there fastened its hawser on the steam-tug "Printer" to said schooner and assumed control thereof.

III.

That thereafter and on the said sixteenth day of November, 1889, the defendant, with said tug "Printer" fastened as aforesaid, proceeded to pilot and tow said schooner over said Humboldt bar into said Humboldt bay at a time when it was very dangerous, unsafe, hazardous, and negligent to do so on account of the heavy seas then breaking on said bar and a strong tide then ebbing thereon, and while being so towed and piloted over said bar by said defendant as aforesaid the said schooner "Fidelity," by the negligence and carelessness of the said defendant and its servants in attempting to cross said bar when said bar was in said dangerous, unsafe, and hazardous condition, and by the negligence and carelessness of defendant and its servants in towing and piloting the said schooner, was capsized on said bar and became a total loss.

IV.

That the place where said schooner "Fidelity" was capsized on said bar as aforesaid is within one English mile of the Pacific Coast of Northern California, and within the admiralty and maritime jurisdiction of said Court.

V.

That Henry Axton, the said claimant, was the owner of a one-sixteenth interest in the said schooner "Fidelity" at the time said schooner was capsized and totally lost as aforesaid.

That said interest was of the value of twelve hundred dollars and that said claimant, by reason of the loss thereof, through the negligence and carelessness of the said corporation, its agents and servants as aforesaid, has been and is damaged in the sum of twelve hundred dollars, no part of which has been paid.

That all and singular the premises are true and within the admiralty jurisdiction of this honorable Court, in verification whereof, if denied, this claimant craves leave to refer to depositions and other proof to be by him exhibited in this cause.

Wherefore claimant demands judgment against the said Humboldt Lumber Company in the sum of twelve hundred dollars and costs of suit, and respectfully asks that his claim be allowed in that amount.

————————,
Proctors for claimant.

State of California, }
County of Humboldt. } ss.

Henry Axton, being duly sworn, deposes and says that he is the claimant mentioned in the foregoing claim, that he has heard the contents read and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to, etc.

Section VI.

ANSWERS AND REPLICATIONS.

No. 92.

Answer to Libel on Bottomry. (a)

[Title of Court and Cause.]

To the Honorable ————, Judge of the District Court of the United States for the district of ————.

The answer of O R, agent of X Y, owner and claimant of the steamship "Union," to the libel of A B against said ship:

And now comes O R, at present residing at ———, agent of X Y, of Liverpool, England, the owner of the steamship "Union," and for answer to the libel of A B against the said ship doth allege and articulately propound as follows:

First. The allegations of the first article of said libel are partly true and in great part untrue. It is true that on ——, 18—, XY, the owner of said steamship, was indebted to the libelant in a large sum of money theretofore advanced to him for the use of said steamship, which sum was $———, or thereabouts, and which was secured by a bottomry and hypothecation of said ship. Respondent is unable to state the exact amount then due, as he is not fully aware of the dates when libelant paid certain bills, and he denies any indebtedness on said date in excess of $——, and requires libelant to prove the same.

It is true that said steamship was then lying in the port of ———, bound thence on a voyage to ———, and back to said port of ———. It is true that the owner of said ship stood in need of further advances of money. It is not true that at that time the owner of said vessel borrowed from libelant additional moneys, but it is true that libelant, at the instance and request of said owner, had agreed to pay out certain sums of money for or on behalf of said vessel in payment of bills, some of which were a lien thereon, but it is not true that at that time the libelant had advanced sums which amounted, together with the amount previously advanced and secured by bottomry as aforesaid, to the sum of $——, or to any amount whatever. Respondent avers the fact to be that on ———. 18—, there was due to the libelant on the old bottomry bond the sum of $———.

That between — ————, 18—, and — ————, 18—, libelant had paid out certain sums of money on behalf of said ship, but he had also received as freight a larger sum than he had advanced, and that on—— ————, 18—, the total amount then due libelant was less than on —— ————, 18—, and did not, as respondent is informed and believes, exceed $————.

It is true that at said date the owner of said vessel gave to the libelant a new bottomry bond and hypothecation on said vessel. It is not true that said sum of $———— was ever advanced and paid by libelant.

Second. The allegations of the second article of said libel are partly true and partly untrue. It is true that the owner of said ship executed and delivered to libelant the bottomry bond alleged and set out in said libel, but it is not true that said bond was given in consideration of advances to the amount alleged in the libel. The true consideration of said bond and the circumstances under which it was issued are hereinafter alleged.

Third. The allegations of the third article of said libel are true.

Fourth. It is not true that there is due to libelant on said bottomry bond the sum of $————, principal, and it is not true that there is due $————, interest. Respondent is unable to state the exact amount of principal or interest due for the reason that though often demanded the libelant has neglected and refused to furnish respondent with vouchers of expenditures alleged by him to have been made and as to many alleged payments respondent is not aware whether or not they have been made at all or if paid he does not know the dates of the payments.

Fifth. The allegations of the fifth article of said libel are true.

Sixth. It is not true that all and singular the premises in said libel are true.

Seventh. And respondent alleges the truth to be that: (here follows the special defense).

Eighth. And, further answering, the claimant and respondent saith and by way of recoupment alleges that on —— ———, 18—, the libelant was and for a long time prior thereto had been the general agent and manager of the said steamship "————," that he was at that time and long prior thereto instructed by the owner of said steamship not to send her out from ————, unless he had an outward freight equal to $———; that disregarding such instructions and for his own purposes, and to procure conveyance of his own freight, and looking solely to his own interests and entirely disregarding the interest of said steamer and the owner thereof, he, on or about —— ————, 18—, sent said steamer on a voyage from ———— to ———— and return, having an outward freight of only $———. That the said voyage so undertaken by libelant for his own interest and in violation of the instructions of and in disregard of the interests of the owner was exceedingly disastrous and resulted in a loss to said ship of $———, or thereabouts, and the expenses of said voyage so wrongfully undertaken by the libelant over and above the receipts thereof constitutes a large portion of the moneys claimed by libelant to have been advanced on the faith of said bottomry bond.

Wherefore, this claimant and respondent prays that a full account may be taken of all moneys advanced by libelant for which said bottomry bond was security, and that libelant be compelled to pro-

duce receipts and releases of accounts alleged by him to have been paid and which if not paid are still a lien on said ship, and that in such account the libelant be charged with all damages which have resulted to claimant from the unauthorized use of said ship by libelant, and that all expenses and payments made by libelant in the course of such unauthorized use and employment of said ship be stricken from the account of said libelant, and that by said accounting it be ascertained what, if any, sum claimant must pay to be released from the obligation of said bottomry bond.

————,
Claimant.

Sworn to before me, etc.

————,
Proctor.

(a) The Sirius, 54 Fed. Rep. 188; 7 U. S. App. 660.

No. 93.

Answer to Libel for Freight Charges. (a)

[Title of Court and Cause.]

To the Hon. ————, Judge of the District Court of the United States of America for the ———— District of ————.

X, Y and Z, copartners, and doing business under the firm name and style of X & Co., of ————, in the ———— District of ————, for answer to the libel of the A Company, a corporation, in a cause of contract, civil and maritime, do allege and propound as follows:

1. They admit the allegations of the first article of said libel.

2. They admit the allegations of the second article of said libel.

3. They admit that, at and during all the times referred to in said libel, libelant was the owner of and was in control of that certain steam vessel named "Bonita" and that, on the —— day of ——— 18——, these respondents shipped on board the said steamer "Bonita" at Moss landing, to be from said landing transported and delivered to the M N Co., at the port of ————, all in the State of ————, certain merchandise, to wit: 2448 sacks of barley, marked "96," and weighing 271,510 pounds.

These respondents deny that, at the time and place mentioned in the third article of said libel, or at any time or place, or ever, or at all, these respondents, or any of them, agreed, either in consideration that the said merchandise should be so shipped, transported and delivered, or otherwise, or at all, to pay to libelant the sum of $4.35 per ton of 2,000 pounds for each or any such ton of the same to be shipped, or transported, or delivered, or any sum exceeding $3.35 per ton of 2,000 pounds.

And in that behalf these respondents allege and propound that the agreement between libelant and respondents concerning the shipping and transportation of said merchandise was as follows and not otherwise: Libelant agreed that it would transport from said ———— to said ————, and would there deliver to the said M N Co., the merchandise aforesaid, and, in consideration that the same was so shipped and should be so transported and delivered, these respondents agreed to pay to libelant the sum of $3.10 per ton of 2,000 pounds, and no other

or greater sum, as freight for the transportation of each and every such ton so transported and delivered, as aforesaid, and that they would also pay to said libelant such storage charges on said merchandise as had theretofore accrued at the warehouse of libelant, at ———— aforesaid, which warehouse charges, as these respondents are informed and believe to be true, were the sum of twenty-five cents per ton of 2,000 pounds, and no other or greater sum.

These respondents admit that at the time aforesaid it was agreed by and between respondents and libelant, at the special instance and request of respondents, that said merchandise should be delivered to said M N Co. at said ———— upon the payment by said M N Co. to libelant, upon such delivery, of the sum of $2.50 per ton of 2,000 pounds for each and every such ton that should be so delivered, which sum of $2.50 per ton so to be paid should be credited as a payment on account toward the payment of the sum agreed to be paid by respondents as herein in this answer alleged; but they deny that they agreed to pay for the same the sum of $4.35 per ton, or any greater sum than $3.35 per ton, as hereinabove alleged, or that they ever promised or agreed to pay to libelant, as a balance over and above said sum of $2.50 per ton, the sum of $2.10 per ton of 2,000 pounds, or any sum or amount exceeding eighty-five cents per ton of 2,000 pounds.

Further answering, these respondents deny each and every allegation contained in the third article of said libel not hereinbefore specifically admitted.

4. They admit the allegations contained in the fourth article of said libel.

5. They admit that on the —— day of ————, 18——, they were informed by libelant of the delivery of said merchandise, and of the payment made

by the said MN Co., as alleged in the fourth article of said libel, and that libelant thereupon demanded of respondents that respondents pay to libelant the sum of $251.15 as a balance upon said contract over and above the said sum of $2.50 per ton so paid by said MN Co., and that respondents then and there refused and ever since have neglected, declined and refused to pay to libelant the said sum of $251.15, or any greater sum or amount than $115.39; but they deny that there is due or ever was due to libelant, as freight upon said merchandise, the sum of $251.15, with or without interest, or any greater sum or amount than $81.45, or that there is or ever was due to libelant from respondents, under the contract aforesaid, any greater sum or amount than $115.39.

6. They deny that, by reason of the premises, or of any matter or thing in said libel alleged or propounded, libelant has been damaged in the sum of $251.15, with or without interest, or in any sum or amount, or at all.

7. Further answering, these respondents propound and allege, that on the —— day of ———, 18——, and upon demand being made upon them by libelant, as aforesaid these respondents offered to pay, and tendered to libelant in full payment and satisfaction of the demand aforesaid, the sum of $115.39, being the whole amount due from them to libelant, as aforesaid, and have ever since that time been ready, able and willing to pay to libelant the said sum of $115.39; but libelant then and there refused, and ever since has neglected and refused to receive or accept the said sum of $115.39,or any part thereof; and these respondents now bring the said sum of $115.39 into Court, and do now deposit the same in the registry of this honorable Court for libelant, in full satisfaction of the obligation aforesaid.

8. That all and singular the premises are true.

Wherefore, these respondents pray that the said libel may be dismissed with costs.

————,

Proctors for respondents.

(a) Pacific Coast S. S. Co. v. Ferguson, 70 Fed. App. 870; 44 U. S. App. 708; see libel in this case, Form No. 56.

No. 94.

Answer to Libel on Marine Insurance. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The answer of the above-named respondent to the libel herein respectfully shows to the Court:

I.

This respondent admits the truth of the first, second, and third allegations of said libel. Further answering unto said libel, this respondent avers that the said schooner was lost at the entrance of the channel over the bar at ———— River, while attempting or preparing to cross the same, and to enter the port or place named ———— River. That in so doing the master of said schooner insured under said policy violated the agreement and warranty contained in the policy sued on, that he would not in the navigation of said schooner, during the lifetime of said policy, use any ports or places on the west coast of America, north of ————, nor islands adjacent thereto, except ———— and ————

Rivers and other ports in said agreement and warranty contained, the said ———— River not being mentioned therein as among the ports permitted to be used.

That by reason of the breach of the warranty aforesaid the said policy was then and there avoided, and this respondent did then and there, and before suit brought thereunder, rescind the said policy, and tender to the libelant's intestate the full amount of premiums theretofore paid by him upon the said insurance.

And this respondent further avers that the libelant's intestate, the assured in the policy sued on, was at all of the times in the libel referred to the master in command of said schooner, and it further avers that the said loss was caused by the gross negligence of the assured himself while doing and attempting to do an act which was willfully and designedly in fraud of the warranty entered into by him; that he would not use the said ———— River, and that the said loss was caused directly by his attempt to make use of said port, and not otherwise.

II.

This respondent admits the allegations in the fourth article of the libel, and further avers that it has refused, and does refuse, to pay said loss on the additional ground (not stated in the libel) that the said loss was caused by the negligence and willful breach of warranty of the assurance hereinbefore stated.

III.

This respondent denies that it has become, or is by reason of the premises, or otherwise, indebted to the libelant in the sum alleged, or in any other sum.

IV.

This respondent denies that all and singular the premises are true, except as hereinbefore expressly admitted, but it admits the jurisdiction of this honorable Court.

Wherefore, the respondent prays to be hence dismissed with its costs.

————,
Proctors for respondent.

(a) O'Connell v. Thames & Mersey Ins. Co., 56 U. S. App. 676.

No. 95.

Answer to Libel on Marine Insurance. (a)

[Title of Court and Cause.]

To the Honorable ————, Judge of the District Court of the United States for the ———— District of ————.

The answer of Z Company to the libel of AB and CB, his wife, against the Z Co. in a cause of contract, civil and maritime, alleges:

I.

Answering unto the first article in said libel, this respondent admits the allegations therein.

II.

Answering unto the second article in said libel, this respondent admits the allegations therein.

III.

Answering unto the third article in said libel, this respondent admits the allegations therein.

IV.

Answering unto the fourth article in said libel, this respondent admits that at the time of the departure of said steamer from the port in the third article in said libel mentioned, the said libelants had on board thereof personal effects consisting of clothing, bedding, charts, nautical instruments, silverware, and other things, but whether they were of the value of more than four thousand dollars or what the value of the same was, this respondent is ignorant so that it can neither admit nor deny the same, wherefore it calls for proof thereof.

Further answering unto said article, this respondent, on information and belief, denies that the same, or any part thereof, were totally lost or at all lost, by reason of the perils insured against or that the same were in fact lost; on the contrary, this respondent, on information and belief, avers that all the personal effects of the said libelants so by it insured were safely rescued and landed from said wreck in good order, and in an undamaged condition, and in such condition were received by said libelants after the same were landed from said wreck.

V.

Answering unto the fifth article in said libel, this respondent avers that whether the said libelants were interested as owners or otherwise in the said effects so insured to the extent of two thousand dollars, or to what extent they were pecuniarily interested in said effects, it is ignorant, so that it can neither

admit or deny the same, wherefore it calls for proof thereof.

VI.

Answering unto the sixth article in said libel, this respondent admits the allegations therein.

VII.

Answering unto the seventh article in said libel, this respondent admits the allegations therein, except it denies, on information and belief, that the said libelants had sustained damages in the sum of two thousand dollars, or in any sum whatsoever.

VIII.

Answering unto the eighth article in said libel, this respondent admits the jurisdiction of this honorable Court in the premises, but on information and belief denies that all and singular the same are true, except as hereinbefore they are admitted to be true.

Wherefore, this respondent prays that said libel be dismissed, and for its costs herein.

Z. Co.,
————, Agents.

————,
Proctors for respondent.

(a) Woodville v. Canton Ins. Office, 84 Fed. Rep. 283.

No. 96.

Answer to Libel for Personal Injuries. (a)

To the Honorable, etc.

The answer of XY, the respondent, to the libel of AB, libelant; the said respondent alleges and propounds as follows:

I.

Admits that the allegations of article I of the libel herein are true.

II.

Admits that the allegations of article II, as amended, are true.

III.

Admits that on said day the said steam tug "Vigilant" went alongside of said schooner "S. Danielson" and obtained from her a tow-line, with which to tow the said schooner from the bay of Santa Rosa to the said steamship "Crown of England"; that libelant and other members of the crew of said schooner, which members of said crew were acting wholly under the direction of the libelant, and not otherwise, passed to the said steam tug a five-inch manilla line, which said line was made fast to the said tug by one end, and the other end thereof made fast to the said schooner, with about forty fathoms paid out, and that space intervening between the said steam tug and the said schooner when the said steam tug went ahead to tow the said schooner as in article III of said libel alleged.

Respondent has no knowledge as to the allegation that said line was a new line, and requires proof of the same.

IV.

Denies that those or any of those having the said steam tug in charge so, or at all, carelessly or negligently or unskillfully performed their duty or the duty of any of them in managing the said tug, or in towing the said schooner in anywise; denies that, instead of towing at a reasonable speed, or such a speed that the said line was capable of withstanding the strain put thereon, they, the said tug, went ahead at full speed; but, on the contrary, alleges that they towed at a reasonable speed, and at such a speed as the line was capable of withstanding the strain put thereon, and denies that they went ahead at full speed or at any speed greater than due care on their part required; denies that libelant or any other member or members of the crew of the said schooner, or the master thereof, or any other person or persons, called to the said tug, or to those or any of those on board of said tug, to go slower, and denies that said tug still kept up the said speed or any speed greater than due care on respondent's part required, or that it towed at any excessive speed.

Admits that said tow-line was pulled in two, as was also a cast-iron chock on said schooner through which the said tow-line passed, but denies that said chock or said tow-line was pulled in two or broken by reason of any speed, excessive or otherwise, at which said tug towed said schooner, or that said chock or said tow-line was pulled in two or broken by negligence or carelessness or unskillfulness of the said or any man in charge of or upon or connected with said tug as aforesaid, or otherwise, or by the negligence or carelessness or unskillfulness of any man or men in respondent's employ, directly or indirectly.

Denies that libelant's leg became or was caught in said tow-line.

Respondent has no knowledge as to the allegation that libelant's leg was injured and damaged; that by reason thereof he has been compelled to have the same amputated below the knee, and he is now, and forever will be, prevented from following his occupation as a seaman or any other occupation, all to his damage in the sum of twenty thousand ($20,000.00) dollars, and requires proof of the same.

V.

Admits that libelant was not in the employ of respondent when he received the said or any injuries, and that the persons in charge of the said tug were in respondent's employ at the said time.

Respondent has no knowledge as to the allegation that libelant suffered great physical and mental anguish by reason of said injuries, and still suffers the same pain, and requires proof of the same.

VI.

Alleges that libelant was the mate of said schooner, and as such mate was in charge of the fore part of said schooner, and under the captain thereof, in full charge and authority of and over the members of the crew of said schooner, and that said tow-line was passed from said schooner to said tug, paid out and made fast by libelant, and the other members of said crew acting under the direction of libelant; that libelant was guilty of great negligence, carelessness, and unskillfulness in passing and paying out said tow-line through the chock he used, to wit, the after chock on the port bow, and that said tow-line should have been passed and paid out through the

forward chock on the port bow, and that said chock through which libelant negligently, carelessly, and unskillfully passed said tow-line was defective.

VII.

Alleges that libelant was guilty of great negligence, carelessness, and unskillfulness in this, that he permitted to be made fast, and did make fast, said tow-line, and permitted a strain to be put thereon before the same was parceled; and of further and additional gross negligence, carelessness, and unskillfulness in standing astride of said tow-line while parceling the same after said tug had begun her towage.

VIII.

Alleges that by reason of libelant's great and gross negligence, carelessness, or unskillfulness, as aforesaid, and by reason of the gross negligence, carelessness, and unskillfulness of one M, who was a fellow-servant of libelant, and who negligently, carelessly, and unskillfully steered said schooner so that the said schooner veered from her course and fouled said tow-line with her headgear, as well as by reason of the defective condition of said chock through which said tow-line had been passed as aforesaid, said chock broke, and libelant, who was standing astride of said tow-line as aforesaid, was struck by said line and thrown forcibly against the capstan of said schooner, whereby he sustained certain injuries, of the extent of which respondent has no knowledge.

IX.

Alleges that by reason of the careless, negligent, and unskillful failure to parcel said tow-line before the same was made fast, and a strain put thereon,

as hereinbefore alleged, and by reason of the careless, negligent, and unskillful steering by which said schooner was permitted to foul said tow-line, as well as by reason of the negligent, careless, and unskillful passing of said tow-line through said defective chock, said tow-line was so chafed and strained that at a considerable time after libelant received his said injuries, but while said tug was still towing said schooner with due care and at a proper speed, said tow-line parted.

X.

Alleges that libelant was not injured as alleged, nor at all, through any negligence, carelessness, or unskillfulness of respondent, but through the negligence, carelessness, and unskillfulness and the lack of due care and caution on libelant's part.

That all and singular the premises are true.

Wherefore, this respondent prays that this honorable Court will pronounce against the demand of the libelant in this libel above mentioned, with costs.

X Y.

_____,

Proctors.

(a) Pederson v. Spreckels, 87 Fed. Rep. 938.

No. 97.

Answer by Stipulation; Libel on Marine Insurance. (a)

[Title of Court and Cause.]

It is hereby stipulated that all of the allegations in the libel herein may be deemed to be admitted except the allegation in the fifth paragraph thereof;

that the allegation that the adjustment therein referred to was a due adjustment, and that upon a due adjustment the amount therein referred to was found to be payable by the respondent be deemed to be denied, and that the respondent be deemed to have alleged in due form that the amount payable upon a due adjustment by the respondent was and is a less sum as appears by the objection to the adjustment specified in Exhibit 1, herewith submitted. And the answer to the libel is hereby waived, it being agreed that this stipulation shall stand as an answer thereto.

Dated ———, 18——.

PAGE & EELLS,
Proctors for libelant.
ANDROS & FRANK,
Proctors for respondent.

(a) New Zealand Ins. Co. v. Earnmore Co., Ltd., 73 Fed. Rep. 867; 48 U. S. App. 245.

No. 98.

Replication to Claim and Answer. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The replication of A B and C D, libelants to the claim and answer of R, claimant and respondent, alleges that they will aver, maintain, and prove their libel to be true, certain, and sufficient; and that the said claim and answer of said claimant and respondent is uncertain, untrue, and insufficient.

That as to whether or not, on or prior to the —— day of ———, 18——, S and R entered into a contract or agreement with the respondent, the Y Co., as set out on pages —— and ——, and —— and —— of the said answer and claim, these libelants have no knowledge or information sufficient to form a belief and therefore they deny the same; and they deny that thereafter, on the —— day of ———, 18——, or at any other time, the W Company and R were the owners of the said steamship "————," or that on said date, or at any other time, they entered into the contract with the said respondent set out on pages —— and ——, and —— and —— of said answer and claim; these libelants deny that thereafter, and before the departure of said steamship "————" from ————, or at any other time, the claimant, the ———— Company, by purchase from the W Company and R, became the owner of said steamship "————," or in any other manner became such owner, and deny that said company is such owner, and deny that said R is the master or bailee thereof on behalf of the owners.

That they admit that the said "————" was towed from ———— to ———— by the tugboat "————," but deny that the said "————" proceeded by her own power to ————, but allege the truth to be that said "————" was at all times, after leaving ————, towed by the steamship "————," mentioned in the libel herein; that they deny that heavy weather was encountered after proceeding a distance of 600 or 700 miles from ————, or at any other time in said voyage, or that by reason thereof the said "————" sprung a leak, but allege the truth to be that the said "————," contrary to the representations made to libelants and to the contract in her behalf made with libelants,

was unseaworthy, and wholly unfit to proceed upon voyage by reason of her infirm, unsafe, and broken condition.

That libelants deny that they purchased tickets of F. ———— & Co., of ————, as alleged on pages 12 and 24 of said answer and claim, but allege that the passage money was paid by them to C. W. ———— & Co., agents of the said respondents, the Y Company, and of said "————," for a continuous voyage from ———— to said ————.

That replying to the allegations in the said answer on the bottom of page 13 and the bottom of page 25, wherein it is alleged that libelants released the steamship "————," libelants deny the same and each and every allegation thereof, and allege the truth to be that they signed a certain paper exhibited to them on board the said "————" at sea, but that the signing of said paper was done under duress, and by the threats and compulsion of the master of the said "————," that if they would not sign the same said master would land libelants on ————, and leave them there to pass the winter without any suitable shelter, fuel, or provisions, so that their lives would be imperiled by exposure in that severe climate, without money, or means if they had money, to leave said place, and said paper was signed after the said "————" had abandoned and given up said voyage, and rendered it impossible for libelants to get to ———— that year, and libelants protested against the signing of the same at all times, and when the same was signed, the said E. B., ————, manager of the said "————," and Captain L., the master thereof, were both present and advised libelants to sign the same, assuring libelants that so signed under duress and against their protest, said paper was void and of no validity,

and said E. B. ———— and L. representing to libelants that if they would sign the same, the said "————" would assume all responsibility for the failure of said voyage, and would be liable and responsible to libelants for a return of their passage money and the damages for such failure, and libelants say that they never voluntarily released the said "————" or signed any paper to that effect.

That libelants deny each and every allegation of affirmative matter contained in said answer and claim not hereinbefore specifically denied.

And libelants humbly pray as in and by their libel they have already prayed.

A B,
C D,
By ————,
Their proctor and attorney.

(a) Jacobi v. Geer, 83 Fed. Rep. 222.

No. 99.

Answer to Interrogatories. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The answer of John Olive Dunsmuir, claimant and owner of the steam-tug "Pilot," her engines, etc., to the libel of the United States of America, for alleged violation of section 4370 of the Revised Statutes of the United States, showeth:

I.

(Answer to Libel.)

II.

And for answer to the interrogatories propounded by the libelant herein the claimant says, in answer to the first of said interrogatories, that the owner of said tug-boat "Pilot," and the owner on May 5, 1891, and for thirty days prior thereto, was John Olive Dunsmuir, of Victoria, British Columbia, Dominion of Canada; in answer to the second interrogatory claimant says the master of said tug-boat "Pilot" was, and now is, Thomas Lawrence, of Victoria, British Columbia, Dominion of Canada; in answer to the third interrogatory, said tug-boat "Pilot" is registered at Victoria, British Columbia, and belongs to the port of Victoria, British Columbia; for answer to the fourth interrogatory the claimant herein says that the said tug-boat "Pilot" first commenced towing the said bark "Valley Forge" at a place about three miles distant from Port San Juan, upon Vancouver Island, in the province of British Columbia, Dominion of Canada.

(a) The Pilot, 48 Fed. Rep. 319; 7 U. S. App. 188; 7 U. S. App. 457; Ad. R. 27, 32, 33.

Section VII.

WARRANTS, MONITIONS, AND CITATIONS. (a)

(a) See Desty's Fed. Proc., sec. 32.

No. 100.

Monition to Cite to Appear and Answer. (a)

———— District of ————.—ss.

The President of the United States of America, to the Marshal of the United States for the ———— District of ————, Greeting:

Whereas, a libel has been filed in the District Court of the United States for the ———— District of ————, on the —— day of ———, in the year of our Lord one thousand eight hundred and ———, by AB against Z Company, Limited, in a certain action of contract of insurance, civil and maritime, to recover the sum of ——— (as by said libel, reference being made thereto, will more fully and at large appear), therein alleged to be due the said libelant, and praying that a citation may issue against the said respondent, pursuant to the rules and practice of this Court; now, therefore, we do hereby empower and strictly charge and command you, the said marshal, that you cite and admonish the said respondent, if it shall be found in your district, that it be and appear before the said District Court, on ———, the —— day of ———, A. D. 18—, at the courtroom in the city of ————, then and there to answer the said libel, and to make its allegations in that behalf, and have you then and there this writ, with your return thereon.

Witness, the Honorable ————, Judge of said Court, the —— day of ———, in the year of our Lord one thousand eight hundred and ———.

[Seal] ————,
Clerk.

————,
Proctors.

Marshal's Return.

I have served this writ personally by copy on ————, this —— day of ———, A. D. 18——.

————,
U. S. Marshal.
By ————,
Deputy Marshal.

(a) Ad. R. 2.

No. 101.

Monition to Cite to Appear in Personam. (a)
(Action for Wages.)

United States of America, }
District of ————. } ss.

The President of the United States of America to the Marshal of the District of ————, or his Deputy, Greeting:

Whereas, a libel has been filed in the District Court of the United States for the District of ————, on the —— day of ———, 18——, by A B against X Y, in a certain action, civil and maritime, for wages therein alleged to be due to the said libelant, amounting to $——, and praying that a citation may issue against the said defendant pursuant to the rules and practice of this Court.

Now, therefore, we do hereby empower and strictly charge and command you, the said marshal ———, that you cite and admonish the said defendant, if he shall be found in your District, that he be and appear before the said District Court on the —— day of ———, 18——. at ————, then and there to answer the said libel and to make his allegations in that behalf; and have you then and there this writ, with your return thereto.

Witness the Honorable ————, Judge of said Court, this —— day of ———, 18——.

————,
Clerk.

————,
Proctor.

(a) Ad. R. 2.

No. 102.

Monition to Cite to Answer Libel in Intervention.

United States of America, }
District of ————. } ss.

The President of the United States of America, to the Marshal of the District of ————, or his Deputy, Greeting:

You are hereby strictly enjoined and commanded that you cite at the premises all persons in general who have, or pretend to have, any right, title, or interest in the steamship "————," to appear before the judge of the District Court of the United States, for the District of ————, at the city of ————, on the —— day of ———, A. D. 18——, if it be a Court day, or else on the Court day next following, at 10 o'clock in the forenoon of such day, then and there to answer unto the libels of intervention of A B, administrator, and C D and others, in the cause of damages, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain; and that you duly certify the Court aforesaid what you shall do in the premises, together with these presents.

Witness the Honorable ————, Judge of said Court, and the seal thereof hereto affixed at ————, in said District, on the ——— day of ———, A. D. 18——.

[Seal]

———,
Clerk.

By ————,
Deputy Clerk.

No. 103.

Monition in Suit for Limitation of Liability. (a)

United States of America, ——— District of ———. } ss.

The President of the United States to the Marshal of the said District, Greeting:

Whereas, a libel on petition has been filed in the District Court for said District on the ——— day of ———, 18—, by M and N, owners of the steam-tug "———," praying the decree of the Court that neither the said libelants nor said steam-tug is liable for the loss and damage occasioned by the collision in the said libel and petition set forth occurring on the ——— day of ———, 18—, on the ——— river, between the said tugboat and the ——— ship "———," or any part thereof, and that the libelants and petitioners be declared entitled to the benefits of the provisions of the maritime law and of the statutes of the United States of America in such case made.

And, whereas, the said Court has caused an appraisement to be made of the value of the said tug in her damaged condition on the day of and after the said collision, which said value has been ascertained to be the sum of $———, and thereupon the said Court has authorized and directed that a stipulation be entered in said sum to stand in place and stead of said steam-tug, which stipulation has been duly entered and approved.

And, whereas, said Court has ordered that a monition issue to all persons having claims by reason of the premises, citing them to appear before the said Court to make proof of their claims, and has appointed

P a commissioner before whom such proof shall be made, with liberty to the libelant or any other person in interest to contest any claim so presented.

You are hereby commanded to cite all persons having or pretending to have claims for any loss, destruction, damage, or injury occasioned by reason of the said collision, to be and appear before the said Court at a session thereof to be held in the District court-room in the city of ————, on the —— day of ———, 18——, at 10 o'clock, A. M., then and there to answer the said libel and petition and make their allegations in that behalf, and on or before said day to make due proof of their respective claims before said commissioner at his office, ————, with liberty to any party in interest to contest any such claims. And what you shall have done in the premises do you then and there make return, together with this writ.

Witness, etc.

(a) Desty's Fed. Proc., sec. 52.

No. 104.

Another Form.

United States of America, } ss.
District of ————. }

The President of the United States to the Marshal of the said District, Greeting:

Whereas, a libel or petition was filed in the District Court of the United States for the ———— District of ————, on the —— day of ———, 18——, by the ——— Company, as owner of the

steamship "————," praying for a limitation of its liability concerning the loss, damage, or destruction, and injury occasioned by the disaster to and abandonment of said steamship on the —— day of ———, 18—, for the reasons and causes in said libel and petition mentioned, and praying a monition of the said Court in that behalf to be issued, and that all persons claiming damages for any such loss, destruction, damage, or injury may be thereby cited to appear before said Court and make due proof of their respective claims; and all proceedings being had, that if it shall appear that the said petitioner is not liable for any such loss, destruction, damage, or injury, it may be so finally decreed by this Court.

And whereas, the value of the interest of the said petitioner in said steamship has been duly appraised at the sum of $——, and there was no freight pending on the voyage of the said steamship on said —— day of ———, 18—, and a stipulation for the payment into Court of the value of the interest of the said petitioner in said steamship has been given.

And whereas [the interest of said petitioner in the said steamship "————" and her freight then pending has been duly transferred to C, as trustee, in compliance with the order of this Court and] the said Court has ordered that a monition issue against all persons claiming damages for said loss, destruction, damage, or injury, citing them to appear and make due proof of their respective claims:

You are therefore required to cite all persons, etc. (as in Form No. 103).

No. 105.

Warrant of Arrest (in Personam). (a)
(Action for Damages.)

United States of America, District of ————. } ss.

The President of the United States of America to the Marshal of the District of ————, or his Deputy, greeting:

Whereas, a libel has been filed in the District Court of the United States for the District of ————, in the —— day of ———, 18——, by AB. late seamon on board the ship (or schooner, etc.), against XY, master of the said "————," in a certain action, civil and maritime, for damages for assault and beating, therein alleged to have been committed upon him, the said libelant, amounting to $——; and, whereas, by the mandate of the Hon. D. J., judge of said Court, process of attachment has been awarded against the said XY.

Now, therefore, we do hereby (b) command you that you attach the said XY if he shall be found in your district, and him safely keep, so that you may have him before the judge of the said Court at a session of the same Court to be holden at ———— on the —— day of ——— next, to answer the said libel and to make his allegations in that behalf (b, see Form No. 105 a). And have you then and there this writ.

Witness the Hon. D. J., Judge of said Court, at the city of ————, in the District of ————, this —— day of ———, 18——.

(a) Ad. R. 7; Ad. R. 16.
(b) See (c) Form 110.

No. 105 a.

Attachment Clause and Summons to Garnishee. (a)

And if the said defendant cannot be found in your district then that you attach his goods and chattels in your district to the amount sued for; and if sufficient goods and chattels cannot be found, that you attach his credits and effects to the amount sued for in the hands of the garnishee, M. of ————, and that you summon the said garnishee to appear before the said District Court on the said —— day of ———— next, at 10 o'clock in the forenoon of the said day, to do and abide what may be required of him in this behalf. And have you, etc.

(a) Ad. rule 37.

No. 106.

Warrant of Arrest and Monition. (a)
(Cause of Tort.)

United States of America, }
District of ————. } ss.

The President of the United States of America, to the Marshal of the District of ————, or his Deputy, greeting:

You are hereby strictly enjoined and commanded that you arrest the vessel called the "————," whereof ———— now is, or lately was, master, her boats, tackle, apparel, and furniture, if she shall be found within your district; and the same so arrested you keep under safe and secure arrest until you shall receive further orders from the Court or the same

shall be discharged in due course of law; and that you cite at the premises all persons in general who have, or pretend to have, any right, title, or interest therein, to appear before the judge of the District Court of the United States, for the District of ————, at the city of ————, on the —— day of ———, A. D. 18——, if it be a Court day, or else on the Court day next following, at ten o'clock in the forenoon of such day, then and there to answer unto AB, administrator of the estates of CD and EF, deceased, in the cause of tort, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain; and that you duly certify the Court aforesaid what you shall do in the premises, together with these presents.

Witness, etc.

(a) Ad. R. 9.

No. 107.

Warrant of Arrest and Monition. (a)

United States of America, } ss.
District of ————. }

The President of the United States of America, to the Marshal of the District of ————, or his Deputy, greeting:

You are hereby strictly enjoined and commanded that you arrest the vessel called the "Ocklahama," whereof M now is, or lately was, master, her boats, tackle, apparel and furniture, if she shall be found within your district; and the same so arrested you

keep under safe and secure arrest until you shall receive further orders from the Court, or the same shall be discharged in due course of law; and that you cite at the premises all persons in general who have, or pretend to have, any right, title or interest therein, to appear before the Judge of the District Court of the United States, for the District of ————, at the city of ————, on the —— day of ———, A. D. 18——, if it be a Court day, or else on the Court day next following, at ten o'clock in the forenoon of such day, then and there to answer unto A, and others, in the cause of damages, civil and maritime, and further to do and to receive in this behalf as to justice shall appertain; and that you duly certify the Court aforesaid what you shall do in the premises, together with these presents.

Witness, the Honorable ————, Judge of said Court, and the seal thereof, hereto affixed, at ————, in said District, on the —— day of ———, A. D. 189—.

[Seal]

————,
Clerk.

By ————,
Deputy Clerk.

(a) Ad. R. 9.

No. 108.

Return and Citation. (a)

United States of America, } ss.
District of Oregon. }

In obedience to the command of the within writ I did, on the —— day of ———, 18——, at the port

of ————, in the District of ————, arrest the within named vessel, the "Ocklahama," in the hands of E M, receiver of the O. R. & N. Co., by going on board of her and seizing and arresting her, and taking said vessel into my custody, together with her tackle, apparel, and furniture; and I served a duly certified copy of this writ at said time upon M, who is captain of said vessel and in charge thereof; I also posted a duly certified copy thereof in a public place in plain view on said vessel; I further caused to be published in the "————," in the said District of ————, for fifteen consecutive publications, exclusive of Sundays, commencing on the —— day of ———, 18——, the following notice and citation hereto annexed and a part of this return.

[Title of Court and Cause.]

Citation.

United States of America, } ss.
District of ————. }

Under and in pursuance of an order, and due and regular process, in the above-entitled Court and cause, I did, on the —— day of ——— 18——, seize that certain steamboat (prior to such seizure in the possession of said libelant and petitioner, A), called the "Ocklahama," her tackle, apparel, furniture, engines, boilers, boats and appurtenances, and the same is now in my possession; and I do hereby give notice, generally, unto all persons having or pretending to have, any right, title or interest in the said steam-

boat "Ocklahama," her tackle, apparel, furniture, engines, boilers, boats and appurtenances, to appear before the said Court, in the city of ————, in said district, on the —— day of ——— next (if it be a Court day, or else on the next Court day thereafter), at 10 o'clock in the forenoon of said day, then and there to make known their claims and allegations in said matter.

Dated at ————, in said district, this —— day of ———, A. D. 18——.

————,

United States Marshal for the District of ————.

No bond having been given as yet for the release of said vessel, I have the said vessel, the "Ocklahama," now in my custody.

Dated at ————, this —— day of ———, 18——,

————,

U. S. Marshal.

By ————,

Deputy.

(a) Desty's Fed. Proc., sec. 279.

No. 109.

Affidavit of Publication. (a)

County of Multnomah, } ss.
State of Oregon. }

I, C. A. ————, being first duly sworn, say that I am the foreman of the printer of "————," newspaper; that said "————" is a daily newspaper published in said county and State and has a

general circulation therein; and that an advertisement, of which the annexed, marked "X," is a true copy, was published in said "————" for fifteen insertions, daily, from the —— day of ———, A. D. 18—, to the —— day of ———, A. D. 18—, inclusive, and appeared in the following issues of said newspaper, to wit, ———, and that during said term said paper was regularly circulated.

————,
Foreman.

(a) Ad. R. 9.

No. 110.

Writ of Attachment (in rem) and Monition and Return to Writ. (a)

United States of America, }
District of ————. } ss.

The President of the United States of America, to the Marshal of the United States for the District of ————, Greeting:

[Seal]

Whereas, a libel hath been filed in the United States District Court for the District of ————, on the —— day of ———, in the year of our Lord, one thousand eight hundred and ——, by AB and CD, against the steamship "Eugene" and the XY Company, and all others whom it may concern, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the

said Court in that behalf to be made, and that all persons interested in the said vessel, her tackle, sails, apparel, furniture, boats and other appurtenances (b), may be cited in general and special to answer the premises, and all proceedings being had that the said vessel, her tackle (as above), etc., may for the causes in the said libel mentioned be condemned and sold to pay the demands of the libelants.

You are therefore hereby commanded to attach the said vessel, her tackle (as above), etc., and to retain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for ———— of the District of ————, on the —— day of ———, A. D., 18——, at ten o'clock in the forenoon of the same day, if that day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ. (c)

Witness, etc.

(a) Desty's Fed. Proc., secs. 433, 435.

(b) If the vessel is a steamship say—"steamship, her tackle, sails, engines, boilers, machinery, apparel," etc.

(c) If an arrest in personam is also prayed for add "we do hereby further" (See (b) in Form No. 105).

Return to Foregoing Writ.

Office of U. S. Marshal, }
District of ————. } ss.

In obedience to the within monition I attached the steamer "Eugene" therein described on the —— day of ——— 18——, and have given due notice to all persons claiming the same that this Court will on the —— day of ———, 18 —— (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated ———, 18——.

————,
U. S. Marshal,
By ————,
Deputy Marshal.

No. 111.

Return.

(Another Form when Ship has been Released on Bond.)

District of Washington. }
Office of U. S. Marshal, } ss.

In obedience to the within monition, I attached the steamer "Eugene" therein described, on the twentieth day of September, and have given due notice to all persons claiming the same that this Court will, on the seventh day of October (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter), proceed to the trial and con-

demnation thereof, should no claim be interposed for the same. And that on the —— day of ———, 189—, I released the said vessel upon receiving a notice of bonding, signed by the clerk of the United States District Court.

Dated ———, 18——.

———,
U. S. Marshal,
By ———,
Deputy marshal.

No. 112.

Citation to Show Cause. (a)

[Title of Court and Cause.]

The President of the United States to Galgate Ship Co., limited, a corporation, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the eighteenth day of May next, pursuant to an order allowing appeal entered in the clerk's office of the District Court of the United States for the Northern District of California in that certain cause entitled "Galgate Ship Co. (limited) (a corporation), v. Starr & Co. (a corporation), respondent," and you are admonished to show cause, if any there be, why the judgment rendered against the said respondent, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, etc.

District Judge.

———.

(a) Ad. R. 2.

No. 113.

Citation to Appear. (a)

United States of America,
District of ————.

C. L., claimant.

Whereas, libels of intervention of A. B., administrator, claiming damages for the death of F. G. and H. G., respectively, killed by collision, and also libels of intervention of C. D. and other passengers and crew of the ship "————" claiming damages by collision, have been filed by ————, proctors in a cause of tort, civil and maritime, against the steamship "————," her tackle, apparel, and furniture, and praying the usual process and monition of the Court that all persons interested in said steamship, her tackle, apparel, and furniture, may be cited to appear and answer the premises and all due proceedings, being had, that the steamship may be decreed to be sold and the proceeds thereof be distributed according to law. Therefore, in pursuance of said monition, under the seal of said Court to me directed and delivered on the —— day of ————, 18—, I do hereby give notice generally unto all persons having or pretending to have, any right, title or interest in the said steamship called the "————," her tackle, apparel, or furniture, to appear before the said Court, in the city of ————, in said district, on the —— day of June, 18—, if it be a court day, or else on the court day next following, at 10 o'clock in the forenoon of such day, then and there to answer the said libels and to make known their allegations in that behalf.

Dated at ————, in said district, this —— day ———, 18—.

————,
United States Marshal for the District of————.

————,
Proctors for A. B., Administrator, C. D., and others.

(a) Ad. R. 2 and 15.

Affidavit of Publication.

State of ————, }
County of ————. } ss.

I, W. M. ————, being first duly sworn, say, that I am the foreman of the printer of the "————," newspaper office; that said "————" is a newspaper published in said county and State, and has a general circulation therein; and that an advertisement, of which the annexed, marked "A," is a true copy, was published in said "————" daily, except Sunday, for fifteen successive days, from the —— day of ———, 18—, to the —— day of ———, A. D. 18—, inclusive, and that during said term said paper was regularly circulated.

W. M. ————,
Foreman.

No. 114.

Citation After Seizure to Show Cause Against Final Decree. (a)

The United States of America, }
District of ————. }

Whereas, on the —— day of ————, 18——, A and B filed a libel in the District Court of the United States for the District of ————, against the steamer "————," her boats, tackle, apparel, and furniture, in a cause of breach of contract, civil and maritime.

And whereas, by virtue of process in due form of law, to me directed, returnable on the —— day of ————, 18——, I have seized and taken the said steamer "————," and have her in my custody:

Notice is hereby given, that a District Court will be held in the United States courtroom in the city of ————, on the —— day of ————, 18——, at 10 o'clock in the forenoon of said day, for the trial of said premises, and the owner or owners, and all persons who may have or claim any interest, are hereby cited to be and appear at the time and place aforesaid to show cause, if any they have, why a final decree should not pass as prayed.

————,
Deputy U. S. Marshal.

(a) Ad. R. 9.

Section VIII.

STIPULATIONS AND BONDS.

No. 115.

Stipulation for Costs (Libelant). (a)

UNITED STATES OF AMERICA.

District Court of the United States for the Northern District of California.

Whereas, a libel was filed in this Court on the —— day of ————, in the year of our Lord one thousand eight hundred and ———, by AB against the Z Co., for reasons and causes in the said libel mentioned, and the said AB and K and L, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libelant, or his sureties, execution may issue against their goods, chattels and lands for the sum of five thousand dollars.

Now, therefore, it is hereby stipulated, and agreed for the benefit of whom it may concern, that the undersigned shall be, and each of them, is, bound in the sum of five hundred dollars, conditioned the libelant above named shall pay all costs and charges that may be awarded against them, in any decree by this Court, or, in case of appeal, by the Appellate Court.

A. B.
K.
L.

Taken and acknowledged this —— day of ———, 18——, before me.

————,
Commissioner United States Circuit Court, ————
———— District of ————.

District of ————.—ss.

K. and L., parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his debts and liabilities.

K.
L.

Sworn to this —— day of ———, 18——, before me.

————,
Commissioner United States Circuit Court, ————
District of ————.

(a) D. C. Rule 7; Ad. R. 5.

No. 116.

Stipulation for Costs (Respondent). (a)

(Title, see Form No. 115.)

Whereas, a libel was filed in this Court on the —— day of ———, in the year of our Lord one thousand eight hundred and ——, by A. B., against the Z. Co., for reasons and causes in the said libel mentioned, and the said Z. Co., Ltd., and M. & N., its sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said respondent, or his sureties, execution may issue against their goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the

sum of five hundred dollars, conditioned the respondent above-named shall pay all costs and charges that may be awarded against them in any decree by this Court, or, in case of appeal, by the Appellate Court.

Z. Co., by their attorney in fact.

P.

M.

N.

Taken and acknowledged this —— day of ———, 18——, before me.

———,

Commissioner United States Circuit Court, ———— District of————.

———— District of ———— ss.

M. & N., parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his debts and liabilities.

M.

N.

Sworn to this —— day of ———, 18——, before me.

———,

Commissioner United States Circuit Court, ———— District of ————.

(a) D. C. Rule 7; Ad. R. 5.

No. 117.

Stipulation of Intervenor. (a)

[Title of Court.]

Whereas, a libel was filed in this Court on the —— day of ———, A. D. 18——, by A B against the steamer or vessel called the "Eugene,"

her tackle, apparel and furniture, for the reasons and causes in the said libel mentioned, and whereas said C D has intervened for his interest and the said C D, and J K and L M, his sureties, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the intervenor or his surety execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the said intervenor above named, shall abide by the final decree rendered in the cause and shall pay all such costs as shall be awarded against him by the final decree of this Court, or in case of appeal, by the Appellate Court.

C. D.
J. K.
L. M.

Taken and acknowledged before me this —— day of ———, 18—.

[Notarial seal]

———,

Notary public residing at ——— ———.

United States of America, }
District of Washington. } ss.

J K and L M, parties to the above stipulation, being duly sworn, each for himself says that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities and property exempt from execution.

J K.
L M.

Sworn to this —— day of ———, A. D. 18—, before me.

———,

Notary public residing at ———, ———

[Notarial seal]

(a) Ad. Rule 34; see Dist. Ct., Rule 7, as to number of sureties required.

No. 118.

Claimant's Stipulation for Costs. (a)

[Title of Court and Cause.]

Whereas, in the above-entitled proceeding the steam tug "Ocklahama" was seized by the marshal of this Court, and taken into the possession of said marshal; and,

Whereas, a claim has been filed in the said cause by the CD Company praying that the Court be pleased to decree to the said the CD Company a restitution of the said vessel, her tackle, etc., and the said CD Company, and JK and LM, as sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or its surety, execution may issue against their goods, chattels, and lands for the sum of $500.00:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of $200.00, conditioned that the CD Company,

the claimant above named, shall pay all such costs as shall be awarded against it by this Court, or, in case of appeal, by the Appellate Court.

THE CD CO.,
By ————, [Seal]
President.
JK, Surety. [Seal]
LM, Surety. [Seal]

Attest: ————, Secretary.

Taken and acknowledged before me this —— day of ———, 18—.

————, Clerk.
By ————, Deputy.

District of Oregon—ss.

We, JK and LM, being first duly sworn, severally depose and say that we respectively reside in the District of ————; that we are householders in said district, and are each of us worth the sum of $500.00 over and above our respective just debts and liabilities.

(a) Ad. Rule 26; see Dist. Ct. Rule 7, as to number of sureties required.

No. 119.

Stipulation for Release of Vessel on Filing of Bond.

[Title of Court and Cause.]

It is hereby stipulated that the above-named vessel and her cargo may be released from custody herein

upon the filing of a bond in the sum of $30,000, the said bond and the sufficiency of the sureties thereon to be approved by this Court.

Dated ————.

————,
Proctors for libelants.

————,
Proctors for intervenors.

No. 120.

Stipulation for Release of Steamboat after Appraisement. (a)

[Title of Court and Cause.]

Whereas, the steamer "————" has been seized in the above-entitled proceeding, and is now in the custody of the marshal, and a due appraisement has been had under the direction of the Court of the said "————," and the said "————," her tackle, apparel, and furniture, have been appraised as and at the value of eighty-six hundred dollars, and the said the C Company, claimant, and M and N, its sureties, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or its sureties execution may issue against their goods, chattels, and lands for the sum of eighty-six hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the

sum of eighty-six hundred dollars, conditioned that the claimant above named shall abide by and pay the money awarded by the final decree rendered in the cause by this Court, or in case of appeal, by the appellate Court.

C.
M,
N.

(b) The above bond is approved.

————,
Judge.

District of ————.—ss.

(c) We, M and N, being first duly sworn, do severally depose and say: That I reside in the district of ————; that I am a householder in said district, and am worth the sum of twenty thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

M
N

Subscribed and sworn to before me this —— day of ———, 18—.

————,
Notary public in and for ————.

[Seal]

(For order of release see Form No. 137.)

(a) Dist. Ct. Rules, 17, 21, 22; Ad. R. 11.
(b) Dist. Ct. Rule 22.
(c) Dist. Ct. R. 21.

No. 121.

Bond to Obtain Release of Ship. (a)

Know all men by these presents that we, I. K——, residing at ————, and L. M————, residlng at ———, are held and firmly bound unto —— marshal of the United States for the ———— District of ————, in the sum of $——— (double the amount claimed in the libel), to be paid to the said ————, marshal of the United States for the district aforesaid, his successors and assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the —— day of ———, 18—.

Whereas, a libel has been filed in the District Court of the United States for the District of ————, on the —— day of ———, 18—, by AB, libelant, against the ship "Union," her tackle, apparel, and furniture, for the sum of $———, on which process of attachment has been issued, and the said ship, tackle, apparel, and furniture, is in custody of the marshal, under the said attachment, and L. M————, claimant of the said ship, has applied for the discharge of the ship from the custody of the marshal and has filed a claim claiming the said ship as owner, and has filed a stipulation for the claimant's costs pursuant to the rules and practice of the said Court; now, therefore, the condition is such that if the above-bounden L. M————, claimant, his heirs, executors, and administrators, shall abide by and perform the decree of this Court, then this obligation shall be void; other-

wise the same shall be and remain in full force and virtue.

K.
M.

Sealed and delivered, taken and acknowledged this —— day of ———, before me.

———.

United States of America, } ss.
District of ———. }

J. K——— and L. M———, being duly sworn, each deposes and says that he resides as above set forth and that he is worth the sum of (four times the amount claimed in the libel), over and above all his just debts and liabilities.

J. K.
L. M.

Sworn to this —— day of ———, 18—, before me.

———.

I approve of the sufficiency of the sureties to the within bond.

———,
Judge.
or ———,
Libelant's Proctor.

(a) Ad. R. 11; Dist. Ct. R. 17; R. S. U. S. sec. 941.

No. 122.

Bond for Appearance. (a)

Know all men by these presents, etc. (See Form No. 121.)

Whereas, a libel has been filed in the District Court of the United States for the ———— District of ————, on the — day of ———, 18—, by A, against the above-bounden Z, in a certain cause, civil and maritime, for personal damage.

Now the condition of this obligation is such that if the above-bounden Z shall appear in said suit before said Court on the —— day of ———, 18—, and further shall abide by and perform all the orders of the Court, interlocutory or final, in the cause, and shall pay the damages adjudged by the Court or by any appellate Court, if any, then the above obligation shall be void; otherwise it shall remain in full force and virtue.

Sealed and delivered, etc.

(a) Ad. R. 3.

No. 123.

Bond—Bottomry. (a)

(Commencement.)

Know all men by these presents: that I, AB (hereinafter called the shipmaster), master of the ship or vessel called "The Union," of the port of San Francisco, am held and firmly bound unto CD, of New York, merchant, hereinafter called the lender, in the sum of $3,000, to be paid to the lender or his certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, and also the said ship or vessel, her tackle, apparel, or fur-

niture, and the freight to be earned by her on the voyage after mentioned (a) firmly by these presents.

Note.—(a) (If the cargo also is to be charged here add:) "and also the cargo now being on board of said ship and about to be put on board of the same."

Sealed with my seal. Dated the —— day of ———, 18—.

Whereas, the said ship lately arrived at the port of Rio from Liverpool, England, after having sustained damage (describe the damage), and being in want of repairs and provisions to enable her to proceed on her voyage to San Francisco, the said shipmaster, in order to be enabled to pay for said repairs and the necessary disbursements and expenses of said vessel, and to enable him to proceed on said voyage, has requested the said lender to lend the sum of $1,500 for the purposes aforesaid, which the said lender has accordingly done, on the hazard and adventure of the said vessel on her said intended voyage, and the said shipmaster has taken up the same on the hazard and adventure aforesaid.

Now, the condition of the above obligation is such that if the said ship or vessel do and shall with all convenient speed sail on the said intended voyage to San Francisco and proceed without deviation (the perils, dangers, accidents, and casualties of the seas and navigation excepted), and if the above-bounden shipmaster, his heirs, executors, or administrators, or the owners of the said vessel, do and shall within ten days after the said vessel shall arrive at her port of destination on her said intended voyage, well and truly pay, or cause to be paid, unto the said lender, or his agent, attorney, executors, administrators, or assigns, the sum of $1,500, together with $12 per centum bottomry premium thereon, or if on the said voyage the said vessel shall be utterly lost, cast away,

or destroyed, in consequence of fire, enemies, pirates, storms, or other, the unavoidable perils, dangers, accidents, or casualties of the seas and navigation, to be sufficiently shown or proved by the said shipmaster, his executors, or administrators, or by the owners of the said vessel, their executors or administrators, then the above-written bond or obligation to be void; otherwise to remain in full force and virtue. (b)

AB,
Master of Ship "Union."

Sealed and delivered in the presence of.

_____.

(b) Note.—The following clause may be added: "And the said AB doth covenant with the said CD that he is the master of the said ship 'Union,' and has authority to charge the same, her freight, and cargo, as aforesaid, and that the same shall at all times be liable and chargeable for the payment of the said bond until the payment thereof according to the true intent and meaning of these presents."

(a) Desty's Fed. Proc., sec. 52; for another Form see The Sirius, 7 U. S. App. 661.

No. 124.

Respondentia Bond.

(For commencement, see Bottomry Bond. No. 123.)

Whereas, the said CD has this day advanced and loaned to the said AB, master as aforesaid, for the use of the said vessel and cargo in their necessary disbursements on account of (state the circum-

stances), and upon the pledge of the cargo of about two thousand barrels of cement, now laden on board of the said vessel.

Now, the condition of this obligation is such that if the said vessel shall sail from the port of Rio, where she now is, and proceed with all convenient speed on her voyage to San Francisco with her said cargo, and there end her voyage (the dangers and casualties of the seas excepted), and if the said AB, his heirs, executors, or administrators, or the owners of the said vessel shall and do, within thirty days after the said vessel shall be safely moored in the port of San Francisco, pay or cause to be paid to the said CD, his attorney, executors, administrators, or assigns, the full sum of $1,500, together with a premium of $15 like money per calendar month for each and every calendar month, and so proportionately for any less time than a calendar month from the day of the date of these presents during which the voyage shall continue; or if during the said voyage an utter loss of the said vessel by fire, enemies, dangers of the seas, or other casualties shall unavoidably happen, and the said AB, his heirs, executors, administrators, or assigns, or the owners of the said vessel, do and shall well and truly account for and pay over to the said CD, his attorney, administrators, or assigns, a just and proportionable average upon all the goods and effects belonging to them or any of them carried from ————, upon the said vessel for the said voyage, and the net proceeds thereof, then this obligation to be void; otherwise to remain in full force and virtue.

AB,
Master of the Ship "Union."

Sealed and delivered in the presence of.

————.

Section IX.

MOTIONS AND NOTICES.

No. 125.

Motion for Order to Sell Steamboat. (a)

[Title of Court and Cause.]

Now come Z & Co., respondents herein, and move the Court that an order be made and entered herein, directing that the steamboat "————," her tackle, apparel, furniture, engines, boilers, boats and appurtenances, now in the custody of the United States marshal for the District of ————, under and by virtue of an order and due and regular process herein, be sold at public sale by said marshal, and that the proceeds of such sale, after deducting the proper costs and expenses thereof, be deposited in the registry of this Court, for such disposition as the Court shall direct.

————,

Proctors for Z & Co., Respondents.

(a) See Dist. Ct. R. 33, 34, 35.

No. 126.

Motion for Findings of Fact and Decree in Accordance with Mandate. (a)

[Title of Court and Cause.]

Now, come Z and Co., by their proctors, and move the Court that findings of fact be made as to the damage sustained by said Z and Co., and that in accordance with the mandate of the United States Cir-

cuit Court of Appeals for the ——— Circuit, filed herein, a decree be entered against the B Company, the C Company, the steamer "————," and as against the bond already filed herein by the petitioners, the B Company.

————

Proctors for Z & Co.

(a) See Desty's Fed. Proc., sec. 213.

No. 127.

Motion for Order for Process of Arrest. (a)

[Title of Court and Cause.]

Now, come Z & Co., respondents herein, and move the Court for process directing the United States marshal for the District of ———— to seize and hold the steamboat "————," her tackle, apparel, furniture, engines, boilers, and appurtenances, for the benefit of the respondents herein, as their several interests may appear.

And said respondents, Z & Co., show to the Court the order of the ——— Court of the United States for the District of ————, filed ———, 18—, in the suit of A against the B Company and others, permitting the process herein moved for to issue as aforesaid, notwithstanding the fact that said steamboat "————" is in the hands of a receiver of said ——— Court in said suit, and, as a part of this motion, file herewith a duly certified copy of said order of said ——— Court.

————,

Proctors for Z & Co., Respondents.

(a) Ad. R. 9.

No. 128.

Motion for Order Directing Marshal to Return Steamboat Wrongfully Arrested.

[Title of Court and Cause.]

Now comes the B Company, one of the petitioners herein, and moves the Court for an order directing the marshal of this Court to return the said "————" to the possession of N., receiver of the ———— Company, and respectfully shows to the Court:

That some time prior hereto the marshal of this Court took into his possession the steamboat "————," and now has and holds the same; that no warrant of arrest of the said "————" was ever lawfully issued from this Court, and no libel was filed in the clerk's office against the said steamer "————."

This petitioner further shows that this Court is without jurisdiction to seize the "————" in this proceeding, for the reason that this cause was remanded to this Court for further proceedings in accordance with the opinion of the Circuit Court of Appeals of the United States for the ——— Circuit, and that this Court is without power or authority in this cause to issue process against the "————," or to cause the said "————" to be seized.

————,

Proctors for the B Company.

No. 129.

Notice of Motion for Interlocutory Order of Sale. (a)

[Title of Court and Cause.]

Gentlemen: You will please take notice that on the libel and claims in this cause, and on an affidavit of which the foregoing is a copy, a motion will be made before His Honor, —— ——, Judge of this Court, at his chambers, ————, in the city of ————, on ——— day, the ——— day of ————, 18—, at —— o'clock, for an order that the ship "————" and her cargo above mentioned be sold under the direction of the marshal, and the proceeds brought into Court, and for such other and further order or relief as may be just.

Dated, etc.

————,
Proctor for Libelants.

To ————,
Proctor for ————.

(a) Ad. R. 10.

Section X.

INTERLOCUTORY ORDERS.

No. 130.

Caption to Orders and Decrees.

At a stated term of the District Court of the United States of America for the ——— District of ————, held at ————, on ——— day, the ——— day of ———, 18—. Present, The Honorable ——————.

[Title of Cause.]

No. 131.

Order for Substitution of Administrator.

(Caption, Form No. 130.)

On motion of ————, proctor for the libelant, and on reading and filing the petition of LM, administratrix of the estate of AB, deceased, ————, Esq., proctor for the respondent, being present and consenting thereto, it is ordered that the said ————, as administratrix of the estate of AB, deceased, be and she is hereby made a party to the above-entitled cause as libelant, in the place and stead of said AB, deceased.

No. 132.

Order for Filing Amended Libel, Nunc pro Tunc.

(Caption, Form No. 130.)

On motion of Chas. Page, of the proctors for libelants, and good cause appearing therefor, it is ordered that the libelants have leave to file the within amended libel, and that the same be filed, nunc pro tunc, as of the date of July 14, 1893.

WM. M. MORROW,
District Judge.

No. 133.

Order for Entry of Defaults on Return of Monition. (a)

(Caption, Form No. 130.)

The marshal having returned, on the monition issued in the above-entitled action, that he had at-

tached the said vessel, her tackle, apparel, and furniture, and had given due notice to all persons claiming the same that the said Court would on the —— day of ————, 18—, proceed to trial and condemnation of said vessel, her tackle, and furniture, and the time within which appearance might be made or claims interposed herein having long since expired, and no persons appearing herein, except P., claimant, and the intervenors, G. H. and K., therefore on motion of libelant's proctor, it is ordered that the defaults of all persons be and the same are hereby entered with the exception only of the above-named claimant and intervenors.

Dated this —— day of ————, 18—.

————,
Judge.

(a) See Ad. R. 29.

No. 134.

Order on Proclamation for Entry of Default and Condemnation of Vessel. (a)

(Caption, Form No. 130.)

The marshal having returned on the monition in this cause that he had attached the said ship "————," her tackle, apparel, and furniture, and the cargo, and had given due notice to all persons claiming the same that this Court would on this day proceed to the trial and condemnation thereof should no claim be interposed for the same,

Now, on motion of Mr. ————, proctor for the libelants, proclamation was made for all persons having anything to say why the said vessel and her cargo should not be sold to answer the prayer of the libelants to appear; and on like motion it is hereby ordered that the defaults of all persons, who have not already filed their claims, be entered and that the said vessel, her tackle, apparel, and furniture, and cargo, be condemned to pay the demands of libelants.

(a) See Ad. R. 29; The Mary, 9 Cranch, 142, 143.

No. 135.

Order to take Libel pro Confesso for Default of Answer. (a)

(Caption, Form No. 130.)

And now at this day, on motion of ————, proctor for the libelant, and on presentation of the affidavit of libelant in support of his claim, it is ordered, adjudged and decreed that the libel be taken pro confesso for default of an answer, ———— (if the libel is in personam add).

And that the libelant AB recover against the defendant XY the amount of his wages, $———, together with interest thereon, $———, in all $———, and costs,

(If the libel is in rem); and that the libelant recover of the said ship "————" the sum of $———, and costs, ———,

[And on like motion it is ordered that a writ of survey and appraisement of the said ship issue to R and S as appraisers, and that they make a report to the Court.]

[And it further appearing that proclamations have been duly made, and that no claimant has appeared, on like motion it is ordered, adjudged, and decreed that the said ship "————," her tackle, apparel, and furniture, be condemned and sold to pay the said decree and costs, and that a writ of sale issue forthwith.]

Dated this, etc.

————,
Judge.

(a) Ad. R. 29; Dist. Ct. R. 34.

No. 136.

Order of Condemnation by Default and Reference to a Commissioner. (a)

(Caption, Form No. 130.)

The marshal having returned on the monition issued in the above-entitled cause that he had attached the said vessel, her tackle, apparel, and furniture, and had given due notice to all persons claiming the same that the Court would on this day proceed to the trial and condemnation of the said vessel, her tackle, apparel, and furniture, should no claim be interposed for the same. Whereupon, on motion of ————, proctor for libelants, proclamation was made for all persons interested in the said vessel, her tackle, apparel, and furniture, to appear and interpose their claims, and no person appearing, on like motion it was further ordered that the defaults of all persons be and the same are accordingly hereby entered, and that the said vessel, her tackle, apparel, and furni-

ture, be condemned to pay the demands of the libelants.

And it is further ordered that it be referred to a commissioner of this Court to ascertain and compute the amount due to the libelants for [cause], and to report the same to this Court with all convenient speed.

(a) See Ad. R. 29; Dist. Ct. R. 34.

No. 137.

Order Directing Marshal to Release. (a)

(Caption, Form No. 130.)

It appearing to the Court that the steamship "————" has been duly appraised at the sum of $———, and that (claimant) has duly given a stipulation with good and sufficient sureties in the form required by law,

It is ordered that the marshal be and he is hereby directed to release the said vessel and restore the same to the possession of the claimant, ————.

Dated ————.

————,
Judge.

(a) See Ad. R. 11; Dist. Ct. R. 20.
See Form No. 120.

No. 138.

Interlocutory Order for Sale. (a)

(Caption, Form No. 130.)

On reading and filing the affidavit of ————, and the admission of proctors for the respective

claimants, and on motion of Mr. ————, proctor for the libelants, it is ordered that the ship "————," her tackle, apparel, and furniture, and cargo, be sold by the marshal on six days' public notice, and that a venditioni exponas issue accordingly; and it is further ordered that the marshal bring the proceeds of such sale into this court and pay the same to the clerk thereof.

(a) Ad. R. 11.

No. 139.

Order for Sale of Vessel Found to be Perishable. (a)

(Caption, Form No. 130.)

And now at this day, on reading and considering the report of the appraisers herein, and on motion of ————, proctor for the libelants, it is ordered that the said brig "————," her tackle, apparel, and furniture, be sold by the marshal as perishable, and that the proceeds of the sale be paid into the registry of the Court to abide the further order of the Court.

Dated the ————.

————,

Judge.

(a) See Ad. R. 10.

No. 140.

Order for Appraisement and Delivery of Perishable Goods. (a)

(Caption, Form No. 130.)

And now, at this day, on reading the affidavit of ———— [or the report of the marshal], and on motion of ————, proctor for the libelants, it is ordered that a writ of survey and appraisement do issue directed to ———— and ————, requiring them to value and appraise the said vessel, and also to consider specially her condition and liability to deteriorate in value from detention, chargeableness, or other cause, and to make report to the Court.

Dated this ————.

————,
Judge.

(a) See Ad. R. 10.

No. 141.

Order Sustaining Exceptions to Libel.

(Caption, Form No. 130.)

The above-entitled action coming on to be heard upon the exceptions of the claimant, the FG Co., to the libel herein, on the —— day of ————, 18—, and after hearing the arguments of counsel of the respective parties, and the Court being fully advised in the premises,

It is hereby ordered that the said exceptions to the libel herein be and the same are hereby sustained, and libelants are given leave to amend their libel herein.

Dated this ——— day of ————, 18—.

————,
Judge.

No. 142.

Order Sustaining Exceptions and Allowing Amendment of Libel. (a)

(Caption, Form No. 130.)

In this cause the motion by respondent for the libelant to produce certain papers this day came on for hearing, and was argued by ————, proctor for the respondent, in support thereof, and by ————, proctor for the libelant, in opposition thereto, and submitted to the Court for consideration and decision, and, after due consideration had thereon, it is by the Court ordered that said motion be and the same is hereby denied, without prejudice.

And thereupon the exceptions to the libel herein came on for hearing, and were argued by Mr. ————, in support thereof, and by Mr. ————, in opposition thereto, and submitted to the Court for consideration and decision; and after due consideration had thereon it is by the Court ordered that the (numbers) exceptions be, and the same are hereby, sustained, and that the (numbers) exceptions be, and the same are hereby, disallowed; and, on motion of Mr. ————, it is ordered that the libelant be, and he is hereby, allowed to file an amended libel.

(a) Ad. R. 51.

No. 143.

Proclamation Order.

(Caption, Form No. 130.)

The United States marshal having returned upon the citation issued herein that he served the same upon ————, by order of the Court, proclamation was duly made; and on motion of ————, proctor for the respondent, it is ordered that respondent have ten days to answer.

No. 144.

Order Allowing Supplemental Answer to be Filed.

(Caption, Form No. 130.)

Now, at this day, on motion of Mr. ————, of counsel for respondents Z & Co., it is ordered that said respondents be, and they are hereby, allowed to file a supplemental answer setting out facts arising during the pendency of this suit.

————,
Judge.

No. 145.

Order Dismissing Libel for Desertion. (a)

(Caption, Form No. 130.)

The libelant having failed to appear in this cause and prosecute his suit according to the course and

order of the Court, on motion of Mr. ————, proctor for the respondent, this suit is pronounced to be deserted and the libel is dismissed, with costs.

————,
Judge.

(a) See Ad. R. 39.

No. 146.

Order for Rehearing. (a)

(Caption, Form No. 130.)

In this cause, in motion of ————, proctor for the libelant, ———— and ————, proctors for the respondent, being present and not objecting thereto, and good cause appearing therefor, it is ordered that the order heretofore entered herein on the —— day of ———, 18——, dismissing the libel herein, be and the same is hereby vacated and set aside; and it is further ordered that a rehearing of this cause be and the same is hereby granted. And it is further ordered that said rehearing be and the same is hereby set for —— day ———, 18——

Dated ———, 18——.

————,
Judge.

(a) The Vrouw, 2 Dod. 78; The Francis Wright, 7 Ben. 101.

No. 147.

Order Staying Proceedings Indorsed on Petition for Rehearing.

(Caption, Form No. 130.)

On reading and filing the foregoing petition it is ordered that the proceedings in this cause be stayed until the further order of the Court, that the matter of said petition be heard on —— day, the —— day of ———, 18——, at — o'clock, A. M., and that a copy of the petition and this order be served on the proctors of the intervenors.

Dated ———.

———,
Judge.

No. 148.

Order Granting Petition for Rehearing. (a)

(Caption, Form No. 130.)

In this case the petition for a rehearing herein this day came on for hearing and said petition was duly argued by ———, Esq., in support thereof, and by ———, Esq., proctor for respondents, and submitted. And after due consideration had thereon it is by the Court ordered that a rehearing herein be and the same is hereby granted.

———,
Judge.

(a) See, ante, notes to Form No. 146.

No. 149.

Order for Decree.

(Caption, Form No. 130.)

This cause came on regularly for further hearing, ————, Esq., appearing as proctor for the libelant, and ————, Esq., as proctor for the claimant.

Mr. ———— made the closing argument on behalf of the libelant and the cause was submitted to the Court for consideration and decision. And after due consideration the Court renders an oral opinion and it is by the Court here ordered that libelant do have and recover the amount sued for in the libel, to wit, $——, and interest amounting to $———, in all amounting to $———, with interest and costs. And it is further ordered that a decree in conformity therewith be duly drawn and entered.

No. 150.

Order for Decree of Salvage.

(Caption, Form No. 130.)

This cause having been heretofore submitted to the Court for consideration and decision—now, after due consideration had thereon, it is by the Court ordered that the libelants and intervenors recover from the claimant the sum of $12,000 as salvage, $6,000 of which in favor of the owners of the steamers "Emily" and Weeott" and $6,000 of which to the crews and officers of the steamers 'Emily" and "Weeott" and their costs; and it is further ordered that a decree in favor of libelants and intervenors in conformity herewith be only drawn and entered.

No. 151.

Order for Appraisement on Petition for Limitation of Liability. (a)

(Caption, Form No. 130.)

On reading and filing the petition of the above-named XY for limitation of liability according to law wherein it is stated that (set out material parts of petition); now it is hereby ordered that R and S are hereby appointed appraisers to appraise and report to this Court the value of the said ship "————," in her condition on the —— day of ————, 18——, immediately after her collision with the steamship "————," and also to report the interests of the several owners of the said ship at the time of the happening of the said collision.

Dated this ————.

————,
Judge.

(a) Ad. R. 54; see notes to Form No. 69, ante.

No. 152.

Order Appointing Trustee. (a)

(Caption, Form No. 130.)

On reading and filing the libel and petition of the XY Co., owners of the (ship) "Union," showing that they have been sued as owners by certain persons claiming to have been injured as passengers or relatives of passengers injured on said vessel on the

—— day of ———, 18——, or the personal representatives of passengers killed on that occasion, or the owners of cargo destroyed thereat to recover for the injuries sustained by such persons and for the loss and destruction, damage, and injury done to such cargo on board of such vessel on that day, and that said injuries, loss, and destruction were suffered by divers, other passengers, freighters and owners of goods and other property on the same voyage, and the whole value of the said vessel and her freight for said voyage is not sufficient to make compensation to each and all of said passengers and relatives and representatives of passengers and said freighters and owners therefor, and that such loss, damage, and injury, was done, occasioned and incurred without the design, neglect, privity, or knowledge of such owners, and that said petitioners desire to claim the benefit of limitation of liability provided for in section 4283, 4284 and 4285 of the Revised Statutes of the United States and other the laws of the United States in that behalf, and also to contest their liability and the liability of said vessel for said loss, destruction, damage, and injury, independently of the limitation of liability claimed under said acts, which libel and petition also states the facts and circumstances of the case and prays proper relief in that behalf; and the said owners having elected to make a transfer as hereinafter provided it is hereby ordered, in conformity with the Revised Statutes of the United States and the rules of Court made in pursuance thereof, that the said petitioners, the Z Company, transfer their interest in the said ship "————" and her freight for the said voyage for the benefit of all such claimants to MN, Esq., of ————, who is hereby appointed pursuant to the provisions of sections 4284 and

4285 of said Revised Statutes to act as trustee for the person or persons who may prove to be legally entitled.

Dated this, etc.

_____,
Judge.

(a) See Ad. R. 54; see notes to Form No. 69, ante.

No. 153.

Order for Transfer of Ship to Trustee. (a)

(Caption, Form No. 130.)

Upon reading and filing the libel and petition of the Humboldt Lumber Company, as owners of the steam-tug "Printer," showing that it has been sued as such by one Amelia James, as administratrix of Frank James, one of the crew of the schooner "Fidelity," and by other persons, to wit (naming them), for damages amounting in the aggregate to the sum of $25,000, claimed to have accrued by reason of the loss of said schooner "Fidelity" while in tow of the said steam-tug "Printer" on the thirteenth day of January, 1876, to recover such damages, and that other actions are threatened against said petitioner, and that the whole value of said steam-tug does not exceed the sum of $20,000, and that the same is therefore not sufficient to make compensation to each of the parties so claiming damages; and that such loss, damage, and injury was done, occasioned, or incurred without the privity or

knowledge of such owner, and that said petitioner desires to claim the benefit of the limitation of liability provided for in the third and fourth sections of the act of Congress entitled "An act to limit the liability of shipowners and for other purposes," passed March 3, 1851, and now embodied in sections 4283 to 4285 of the Revised Statutes and the various statutes in addition thereto and amendatory thereof, and also to contest its liability and the liability of said steam-tug for said loss, damage, and injury, independently of the limitation of liability claimed under said act, said libel and petition also stating the facts and circumstances on which such exemption from and limitation of liability are claimed, and praying proper relief in the premises in that behalf, and the said owner having elected to make a transfer as hereinafter provided,

It is hereby ordered, in conformity with the said act of Congress and the acts amendatory thereof and the rules of the Supreme Court of the United States, made in pursuance thereof, that the said Humboldt Lumber Company transfer its interest in the said steam-tug "Printer" for the benefit of all such claimants to Percy Jones, of the city of Tacoma, who is hereby appointed, pursuant to the provisions of the fourth section of said act, to be a trustee for the person or persons who may prove to be legally entitled thereto.

_____,

Judge.

(a) See Ad. R. 54; see notes to Form 69, ante.

No. 154.

Order for Monition on Petition for Limitation of Liability. (a)

(Caption, Form No. 150.)

On reading the libel and petition herein verified and filed on ————, 18——, for limitation of the liability of the petitioner above named, and it appearing therefrom that the steamship "D" broke her shaft and was finally abandoned at sea on April 6, 1889; and that said vessel and the cargo thereon became a total loss; and said petitioner, as owner of the "D," also contesting its liability and the liability of said steamship for said loss, destruction, damage and injury, independently of the limitation of liability claimed, and the said libel and petition having stated the facts and circumstances by reason of which exemption from and limitation of liability are also claimed [and on reading the order of this Court dated the —— day of ———, whereby it has been ordered that the said petitioner transfer its interest in said steamship and her freight for the voyage in said libel and petition mentioned to ———— Esq., to act as trustee for the person or persons who may prove to be legally entitled thereto, pursuant to the provisions of the act of Congress and the statutes amendatory thereof in said libel and petition referred to, and upon reading and filing the instrument of transfer duly executed by said petitioner by its authorized agents, bearing date the —— day of ———, 18——, whereby it appears that the petitioner's interest in such vessel and freight have been transferred to such trustee pursuant to such order and the said statutes and the rules of the

Supreme Court of the United States in that behalf], or [and the amount or value of the interest of the petitioner in the steamship "————," her engines, boilers, machinery, tackle, apparel, and furniture, immediately after the accident sustained by her on the —— day of ———, 18——, having been duly appraised at the sum of $——, as appears from the order entered herein on the —— day of ———, 18——, and there being no freight pending on the voyage of the said steamship "————" on the said —— day of ———, 18——, and the petitioner having duly given a stipulation, with sureties, for the payment of said amount into Court whenever the same shall be ordered, and the said stipulation having been duly approved by the Court], now, on motion of A and F, proctors for the petitioner,

It is hereby ordered that a monition issue out of and under the seal of this Court against all persons claiming damages for any loss, destruction, damage, or injury occasioned by the disaster to the said steamship "D" and her subsequent abandonment referred to in said petition, citing them to appear before this Court and make due proof of their respective claims on or before the —— day of ———, 18——, at —— o'clock in the forenoon; and ————, Esq., a commissioner of the ———— Court, is hereby designated as the commissioner before whom such claims shall be presented in pursuance of said monition.

It is further ordered that public notice of such monition be given by the United States marshal for this district in a newspaper for the space of fourteen days and thereafter once in each week until the —— day of ———, 18——, and that a copy of such monition and of this order be personally served on the attorney, proctors or solicitors of record for

the plaintiffs or libelants in each of the suits brought and pending in any Court of the United States against said [the petitioner], to recover for any such damages, such service to be made at least one month prior to the said —— day of ———, 18——.

It is further ordered that the prosecution of all or any suit or suits, actions or proceedings against (the petitioner), in respect of any claim for damages for any loss, destruction, damage, or injury occasioned by said disaster to the steamship "D," or her loss and abandonment, be and the same is hereby restrained.

It is further ordered that any person claiming damages as aforesaid who shall have presented his claim to said commissioner under oath shall be at liberty on or before said last-mentioned date or within such further time as this Court may grant to answer the libel and petition herein and to contest the right of the petitioner either to the limitation of liability or exemption from liability, or to both of said reliefs, as prayed for in said petition.

(a) See Ad. R. 54; see notes to Form No. 69, ante.

No. 155.

Order for Reference to Commissioner to Take Proofs and Report. (a)

(Caption, Form No. 130.)

And now, towit, on this —— day of ———, 18——, on motion of Mr. ————, proctor for A, the libelant in the above entitled cause, it is ordered that all of the libels in said cause be and they are hereby

referred to ————, Esq., commissioner, to ascertain and compute the amounts due to the respective libelants and petitioners, with leave to each and every of said libelants and petitioners to contest the amount due to each of the other libelants and petitioners, and to submit proofs therein, and also to contest the jurisdiction of this Court and the priority of the respective claims.

And it is ordered that the commissioner take proof thereon and report to the Court with all convenient speed.

(a) See Ad. R. 44.

No. 156.

Order Confirming Report and for Summary Judgment on Release Bond. (a)

(Caption, Form No. 130.)

On reading and filing the report of S, United States commissioner, to whom the above matter was referred, by which there is reported to be due to the above-named libelant for damages sur collision, the sum of $——, now, on this day, on motion of Mr. ————, proctor for the said libelant, it is ordered that the said report be and the same is hereby confirmed and that the said libelant recover in this action against the ship "————," the said amount reported due, with his costs, to be taxed.

And it is further ordered that in pursuance of the act of Congress passed March 3, 1847, a summary judgment be and the same is hereby entered against

Z, the principal, and X and Y, the sureties, on their bond, given on the discharge of the property arrested for the sum of $——, the amount of the said bond executed on discharging the said ship from custody.

And it is further ordered that unless an appeal be taken to this order within the time limited and prescribed by the rules of this Court, the libelant have execution to enforce satisfaction of this order.

Dated this, etc.

——————,
Judge.

(a) See Ad. R. 3 and 6.

No. 157.

Order Sustaining Exceptions to Commissioner's Report. (a)

(Caption, Form No. 130.)

The exceptions of the libelant to the report of commissioner Hoffman having been heretofore submitted to the Court for consideration and decision, now, after due consideration had thereon, the Court renders its opinion and it is by the Court ordered that said exceptions be and the same are hereby sustained and allowed.

And it is further ordered that a decree in favor of the libelant for $—— and costs be duly drawn and entered.

(a) From the proceedings in The Alejandro. 15 U. S. App. 98; see Ad. R. 36.

No. 158.

Order to Show Cause.

(Caption, Form No. 130.)

Upon reading the annexed affidavit of ———— it is hereby ordered that A, the libelant herein, show cause before this Court, at the courtroom thereof in ————, at —— o'clock, on ——day, the —— day of ———, 18——, why an order should not be made by this Court requiring libelant to (e. g., produce for inspection by the respondent the letters and cablegrams mentioned in said affidavit).

It is further ordered that a copy of this order to show cause and said affidavit be served on the libelant by delivering the same to Messrs. ————, of proctors for libelant, at their office in ———, on the —— day of ———, 18——.

Dated ————

————,
Judge.

No. 159.

Order for Issue of Warrant of Arrest in rem. (a)

(Caption, Form No. 130.)

At this time came on to be heard the exceptions of N O, receiver, to the petition of XY & Co., for leave to make N O, receiver, a party to the cause now pending in the District Court of the United States for the District of ————, wherein the

A B Company and the CD Company are libelants and petitioners, and the petitioners herein XY & Co., and others, are respondents, being a suit to limit the liability of the said companies, petitioners in the matter of a collision involving the barge "————" and the steamboat "————," and Mr. ———— appearing for the receiver, N O, and Mr. ————, appearing for the petitioners, X Y & Co., and the Court being fully advised in the premises:

It is hereby ordered that the prayer of said petition for leave to join said N O, receiver, as a party to said suit, and that, meanwhile, he hold and operate said "————" for the use and benefit of the petitioner, be denied; but it is further ordered that the petitioners have leave, upon due process issued out of and by the District Court of the United States for this District, in said suit of the AB Company and the CD Company, to seize and proceed against said steamboat "————," her tackle, apparel, and appurtenances, without prejudice, however, to the right of any person claiming an interest in said boat to appear in said proceedings in the District Court, and present their said claims as the same may appear.

————,

Judge.

(a) See Ad. R. 9.

No. 160.

Order for Consolidation of Libel and Cross-Libel, Collision. (a)

(Caption, Form No. 130.)

[Title of Cause.] (Libel.)

[Title of Cause.] (Cross-libel.)

On motion of ————, Esq., and in accordance with the mandate of the United States Circuit Court of Appeals filed in the above-entitled causes, it is by the court ordered that the said causes be and the same are hereby consolidated and to be tried as one case upon the question of the amount of damages sustained by the "Portland" and the "State of California" respectively by reason of the collision.

And it is further ordered that these cases as consolidated be and they are hereby referred to ——— ———, Esq., as commissioner to ascertain and compute the amount of damages sustained by the said "Portland" and the said "State of California" and to report the same to the Court with all convenient dispatch.

(a) Dist. Ct. Rule 5.

Section XI.

DECREES.

No. 161.

Decree Sustaining Exceptions to Answers and Allowing Petition for Limitation of Liability. (a)

(Caption, Form No. 130.)

Now, at this day, this cause came on to be heard upon the several separate exceptions of the respondents V W, X Y, and Z, to the several separate answers of A B, the claimant herein, filed in answer to the several separate answers made to the libel and petition of A B, and the said X Y, and Z, appearing by Mr. ————, their proctor; and the said A B appearing by Mr. ————, its proctor; upon consideration whereof, the Court being fully advised in the premises:

It is ordered that the said several exceptions, and each of them, are hereby severally sustained.

And thereupon the Court announced a rule that the said claimant, A B, would not be permitted to introduce evidence in support of its said several answers; and thereupon the said A B announced that it did not desire to plead further. And upon the several motions of the said several respondents, thereupon made, for findings of fact upon the evidence already adduced, the Court finds as follows:

That the respondent V W has sustained damages in the sum of $————.

That the respondent X Y, administratrix of the estate of ————, deceased, has sustained damages in the sum of $————.

That the respondent Z has not sustained any damage.

And it further appearing that the said steamboat "————" was not surrendered for the benefit of the respondents in these proceedings as their several rights and equities might appear; and that in equity and good conscience said steamboat ought to have been surrendered as aforesaid; and that therefore, on the —— day of ———, 18—, said steamboat was seized and brought into these proceedings under the due and regular warrant of this Court; and that thereafter, on the —— day of ———, 18—, a claim to said steamboat was duly filed by said claimant herein, the said A, together with a stipulation in the sum of $ ———, to pay all costs awarded by this Court or the Appellate Court against the said claimant, with M as surety upon such stipulation; and that afterward, on the —— day of October, 18—, said steamboat was duly appraised under the order of this Court at the valuation of ———, and was thereafter released to said claimant, by order of this Court, upon said claimant filing in this proceeding, on the —— day of ———, 18—, its stipulation in the sum of $———— with N and O as sureties upon such stipulation: Now, therefore, it is ordered, adjudged, and decreed that the said respondents V W and X Y, severally, and not jointly, have and recover out of the fund brought as aforesaid into the jurisdiction of this Court in this proceeding the several respective sums as follows:

That the said V W have and recover as aforesaid the sum of $———, without interest.

That the said X Y, administratrix of the estate of ————, deceased, have and recover as aforesaid the sum of $————.

It is further ordered, adjudged, and decreed that

the said V W, and the said X Y, administratrix as aforesaid, also have and recover out of said fund, severally and not jointly, their respective costs and disbursements, taxed and to be taxed, including such costs before any appeal, on appeal, and subsequent to the appeal heretofore had in this cause; and that they, and each of them, also have and recover, severally, and not jointly, against the said A B and its stipulation heretofore filed herein, and against M, surety upon such stipulation, their respective costs and disbursements in this proceeding, in the matter of the seizure of the said steamboat "————" and the intervention of said A B as claimant.

And it appearing to the Court that the said fund in the jurisdiction of the Court, towit, the said sum of $———, is not sufficient to satisfy the foregoing awards:

It is further ordered and decreed that said sum be distributed as follows:

First.—To the payment of all costs and disbursements of the said V W, including costs on appeal.

Second.—The residue of said sum to be applied pro rata upon the several sums herein found and decreed to be due to the said V W, and X Y, administratrix, respectively.

It is further ordered and decreed that the said A B, claimant herein, pay into the registry of this Court, for distribution as aforesaid, the sum of $————; and that if, within ten days from the date of this decree, the said claimant has not paid in said sum as aforesaid, execution may issue against said claimant and the stipulators on its said last-mentioned undertaking, towit, N and O, or either of them, for the respective amounts herein severally awarded; and that execution issue against said A B and M, stipulators on said stipulation, for costs, for the amount

of costs covered by their said stipulation as aforesaid, if the same be not paid within ten days from the date of this decree.

And it is further ordered and decreed that upon the payment into court, or upon execution of said sum of $————, and the payment of costs as aforesaid, the petition herein for a limitation of the liability of the petitioners be, and the same is hereby, allowed.

(a) See Ad. R. 36.

No. 162.

Decree Dismissing Libel.

(Caption, Form No. 130.)

At a stated term of the District Court of the United States of America for the ———— District of ————, held at ———— in the city of ————, and on (dates), the above case having come on regularly for trial on the pleadings and proofs, and the proctors for the respective parties having been heard, and due deliberation had in the premises:

It is ordered, adjudged, and decreed by the Court that the libel herein be, and the same is hereby, dismissed.

It is further ordered, adjudged, and decreed that the claimant recover its costs herein taxed at $——.

Dated ————, ——— —, 18—.

————,

United States District Judge, ———— District of California.

No. 163.

Final Decree Dismissing Libel. (a)

(Caption, Form No. 130.)

This cause came on to be heard upon the motion of AB, as administrator, respectively, of the separate estates of D, deceased, and E, deceased, the libelant herein, to amend the order entered herein on the —— day of ————, 18—, so that the same shall conform to the opinion rendered by this Court on or about said date relative to the matters covered by and referred to in said order, and was argued by Mr. ————, of counsel for the said libelant, and by Mr. ————, of counsel for the claimant, and it appearing that the order heretofore entered is erroneous in that it does not conform to the opinion rendered.

It is ordered that the said order made and entered herein on the —— day of ————, 18—, be and the same is hereby amended, nunc pro tunc, so that the same shall read as follows:

"This cause was heard on the exceptions to the libel herein, and was argued by ————, of counsel for the libelant, and by ————, of counsel for the claimant. On consideration whereof:

"It is ordered and adjudged that of the exceptions of said Z, claimant, to the libel of AB, administrator of the estates respectively of D, deceased, and E, deceased, the exceptions numbered one, two, three, five and six be and they are hereby overruled; that the matter in said libel excepted to by the exception numbered four, shall be considered as stricken from the libel; and that the exception numbered seven, be, and it is hereby, sustained.

"And the said AB, administrator as aforesaid, not desiring to plead further:

"It is hereby ordered, adjudged and decreed that the libel of AB, as administrator as aforesaid, be, and the same is hereby, dismissed, with the costs to the claimant.

"And thereupon the said libelant, in open court giving notice of appeal to the United States Circuit Court of Appeals for the ———— Circuit, and praying that such appeal be allowed.

"It is further ordered that said appeal be and the same is hereby allowed."

————,

Judge.

(a) See Ad. R. 36.

No. 164.

Decree for Libelant on Hearing with Reference to Commissioner to Compute. (a)

(Caption, Form No. 130.)

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed that the libelant recover the amount of his [claim] in this cause; and it is further ordered that it be referred to a commissioner to ascertain and compute the amount due to the libelant in the premises, and that he report the same to this court with all convenient speed.

(a) Ad. R. 44.

No. 165.

Decree for Libelant on Hearing in a Cause of Damage, with Reference to Commissioner to Take and Report Testimony on the Amount of Damage. (a)

(Caption, Form No. 130.)

This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed that the libelant recover his damages for the [cause of action] mentioned in the libel, and that it be referred to a commissioner to take the testimony of the amount of such damages, and to report the same to the Court, with all convenient speed.

(a) See Ad. R. 44.

No. 166.

Final Decree Confirming Commissioner's Report and Giving Judgment against Bail. (a)

(Caption, Form No. 130.)

The time for filing exceptions to the commissioner's report having expired, and no exceptions having been filed on reading and filing the report of ————, United States commissioner, to whom the above matter was referred, by which there is reported due to the libelant for the [cause of claim] demanded in the libel the sum of $————.

Now, on motion of Mr. ————, proctor for the libelant, it is ordered that said report be in all things confirmed, and that the respondent pay to the libelant in this action the amount so reported due to him, together with his costs, to be taxed.

And it is further ordered that a summary judgment be, and the same is hereby, entered against the said XY, the principal, and M and N, the sureties for the sum of $———, the amount of the bond and stipulation given to the marshal on bonding, and that the libelant have execution thereon to satisfy this decree.

(a) Ad. R. 3.

No. 167.

Final Decree (Salvage). (a)

(Caption, Form No. 130.)

This cause having been heard on the pleadings and proofs, and the premises being considered, and it appearing to the Court that the services rendered by the libelants and intervenors to the steamship "Bawnmore" constituted salvage services, and that the libelants laid out and expended moneys in performance of the said salvage services, which said sums should be reimbursed to them before apportionment of salvage; and it further appearing that certain of the intervenors hereinafter named rendered services of a specially meritorious character, for which they should receive special salvage awards,

It is now ordered, adjudged and decreed that the sum of $12,000 be, and the same is hereby, awarded to the said libelants and intervenors against the said steamship "Bawnmore" in payment of the disbursements and salvage services aforesaid, and that the said amount be paid and distributed as follows, viz.:

To the libelant, Charles P. Doe, managing owner of the steam schooner "Weott," or his proctors, the sum of $1,000 for his expenses and disbursements incurred in said salvage services.

To the libelant, Albert Meyer, managing owner of the steam schooner "Emily," or his proctors, the sum of $1,000 for his expenses and disbursements incurred in said salvage services.

To the said libelants, Charles P. Doe and Albert Meyer, managing owners as aforesaid, or their proctors, the sum of $5,000 for the salvage services rendered by the said steam schooners.

To each of the intervenors hereinafter named, or their proctors, the sums respectively set opposite their names, to wit:

Name.	Amount.
Etc.	Etc.

together with their costs in this action, to be taxed.

And now, upon motion of Messrs. Andros & Frank, Page, Eells & Wheeler, proctors for libelants and ————, proctors for intervenors, it is further ordered, adjudged and decreed that the said steamship "Bawnmore" be condemned to pay the said several amounts and costs.

W. W. MORROW,
Judge.

(a) See Desty's Fed. Proc., sec. 52.

No. 168.

Final Decree (Insurance). (a)

(Caption, Form No. 130.)

The above cause coming on regularly to be heard on the pleadings and proofs, and the counsel for the respective parties having been heard, and due deliberation had in the premises,

It is now ordered, adjudged, and decreed that the above-named libelant, AB, do have and recover from the above-named respondent, the XY Company, the sum of ———— dollars and — cents, together with interest on said sum from the —— day of ———, 18—, at the rate of ——— per cent per annum, amounting in all to the sum of ———— dollars and — cents, and its costs to be taxed.

————,
Judge.

(a) See Desty's Fed. Proc., sec. 52.

No. 169.

Final Decree (Collision). (a)

(Caption, Form No. 130.)

This cause came on regularly to be heard by the Court upon the libel of libelant herein, and the answer thereto of the respondent VW (the respondent XY having been heretofore, by reason of proceedings taken by it, pursuant to sections 4282 and 4289 of the Revised Statutes of the United States, been dismissed herein), and upon the proofs submitted by the respective parties, proctors for both parties having been

heard thereon, and the cause having been tried on its merits and submitted to the Court for its determination, and the Court having delivered and filed herein its decision in writing, wherein and whereby it finds the allegations of the libel herein to be true, except that it finds the libelant to have been damaged by the said respondent VW in the sum of $1,000 only, instead of in the sum stated in said libel; and the Court having ordered a decree to be made and entered herein in favor of the libelant and against the respondent VW for the sum of $1,000,

Now, therefore, by reason of the premises, it is hereby ordered, adjudged and decreed that the said libelant ———— do have and recover from the respondent VW the sum of $1,000, with legal interest thereon from the date hereof, with libelant's costs of suit, taxed at $———.

And it is further ordered, adjudged and decreed that the said sums may be paid to the proctors of the libelant, and that said proctors may enter complete satisfaction of this decree upon payment to them of the said sum hereinbefore specified.

And it is further ordered, adjudged and decreed that, unless this decree be satisfied or proceedings thereon be stayed on appeal within the time limited and prescribed by the rules and practice of this Court, the libelant have execution against respondent VW to enforce satisfaction of this decree, or of so much thereof as shall remain unsettled.

Done in open Court at a stated term, etc., this ——— day of ————, 18—.

————,

Judge.

(a) From the proceedings in Smith v. The Occidental Co., 61 Fed. Rep. 338; see Desty's Fed. Proc., sec. 52.

No. 170.

Final Decree. (a)

(Caption, Form No. 130.)

The monition and attachment issued in the above-entitled cause having been heretofore duly returned, and the default of all persons, except the above-named claimant and intervenors having been duly entered herein, and this cause coming on regularly to be heard upon the pleadings and proofs of the respective parties herein, and argued by the proctors of the respective parties, and after due deliberation being had in the premises, the Court finds that all of the material allegations of the libel are true, and that the libelants are entitled to recover herein, and the Court having assessed the amount of said libelants' recovery at the sum of ——— dollars ($———) for each of the libelants, and it appearing to the Court that the said steamer "————" is liable in specie for the payment of said amount to each of the libelants, therefore, on motion of proctor for libelants,

It is hereby ordered, adjudged, and decreed that the said steamship "————," her tackle, apparel, and furniture, be, and the same hereby are, condemned for the payment of the aforesaid amounts, to wit, for the payment of the sum of ———— dollars to the libelant AB, and for the further sum of ———— dollars to the libelant CD, together with the costs and disbursements of this action, taxed at the sum of ———— dollars.

And a stipulation having been duly entered into and filed in this cause by the respective parties, wherein it is stipulated and agreed that the intervenors, M, N and O, shall abide the result of the trial of the issues between libelants and claimant herein,

and shall be entitled to the same recovery upon their intervening libels herein as might be recovered by the principal libelants AB and CD, therefore, in accordance with said stipulation, and on motion of the proctor of said intervening libelants,

It is ordered, adjudged, and decreed that the said intervenor M do have and recover herein the sum of ———— dollars ($————), and that the said intervenor N do have and recover herein a like sum of ———— dollars, and that the intervenor O do have and recover herein a like sum of ———— dollars ($————), together with their costs and disbursements herein, taxed at the sum of ———— dollars, and that the said steamship "————," her tackle, apparel, and furniture, be, and the same hereby are, condemned to the payment of the said sums.

And it is further ordered that the claim of the intervening libelant OP be reserved for such judgment or orders as the Court deems just, upon such further hearing as may be had upon the issues therein.

And it is further ordered, adjudged, and decreed that the said steamship "————," her tackle, apparel, and furniture, be, by the marshal of this district, exposed for sale and sold at public vendue, to the highest and best bidder for cash, after due notice as provided by law and the rules and practice of this Court, and that the said marshal pay the proceeds arising from such sale, after deducting the costs and expenses thereof, into the registry of this Court, there to await the further order of the Court in the premises as to the distribution of the same.

And to that end it is ordered and decreed that the clerk of this Court issue a decree of venditioni exponas to the said marshal, returnable as required by the rules and practice of this Court, and that the

said marshal execute the same and make return thereof with all convenient speed.

Dated ———, 18—.

———,
Judge.

(a) From the proceedings in Gear v. Jacobi, 83 Fed. Rep. 222; see Desty's Fed. Proc., sec. 52.

No. 171.

Decree (Money Claim). (a)

(Caption, Form No. 130.)

This cause having been heard on the pleadings and proofs, and the counsel for the respective parties having been heard, and due deliberation being had in the premises, and the Court thereupon finding that the libelant has advanced to the claimant under the hypothecation of said steamship "————," her tackle, apparel and furniture on bottomry, as set forth in said libel, the full sum of $——— over and above all legal set offs, credits and deductions, and the Court further finding that of the said sum so advanced there is now due and owing to the said libelant, under the said bottomry bond, the sum of $———, together with maritime interest thereon at the rate of eight per cent per annum from the ——— day of ————, 18—, to the ——— day of ————, 18—, amounting in all to the sum of $———.

It is now ordered, adjudged and decreed that the said libelant do have and recover against the said steamship "————," her tackle, apparel, and furniture, the sum of $———, gold coin of the United States, together with interest thereon from ————, 18—, at the rate of seven per cent per annum, and costs, to be taxed.

And upon motion of ————, proctors for libelant, it is further ordered, adjudged and decreed that the said steamship "————," her tackle, apparel, and furniture, be sold by the marshal on six days' public notice, and that a writ of venditioni exponas issue accordingly.

And it is further ordered that the marshal bring the proceeds of such sale into this Court, and pay the same to the clerk thereof, and that the said clerk thereupon pay to this libelant, out of the said proceeds, the said sum of $———, together with interest thereon at the rate of seven per cent per annum from the ——— day of ————, 18—, and costs as taxed.

Dated this ————.

————,
Judge.

(a) From the proceedings in "The Sirius," 54 Fed. Rep. 188; see Desty's Fed. Proc., sec. 52.

No. 172.

Order on Petition for Limitation of Liability. (a)

(Caption, Form No. 130.)

Whereas, a petition was filed in this Court on the ——— day of ————, 18—, by Jacob Jensen, etc., in a cause of limitation of liability, setting forth certain damages or loss to Patrick Curtin by falling down the hatchway of the bark "Sumatra" while on a voyage from Antioch to San Francisco, and if it should be hereafter found that any liability upon their part existed by reason of the damage resulting from said accident, they claimed the benefit of limitation of liability therefor to the value of said bark "Sumatra" and her freight then pending at the time of said loss.

And, whereas, said petition further sets forth that a suit has been commenced against said petitioners in the Superior Court in and for the city and county of San Francisco, State of California, by said Patrick Curtin, to recover damages for the injury sustained by him by reason of said accident, and said petitioners having prayed this court to cause due appraisement to be made of the value of said bark "Sumatra" and the freight then pending, and of the interest therein of the said petitioners respectively at the time of said accident, to wit, ————, 18—, and that they be allowed to give bond in the said appraised value of said bark according to the rules and practice of this Court in admiralty,

It is now, on motion of N. H. Frank, one of the proctors of said petitioners, ordered that the said matter be, and the same is hereby, referred to Southard Hoffman, Esq., the commissioner of this Court, to ascertain and appraise the value of the said bark

"Sumatra,'" her tackle, apparel and furniture and freight then pending, as the same was at the time of the accident in said petition mentioned, to wit, on the ——— day of ————, 18—, upon at least fourteen days' notice to the attorneys of the said Patrick Curtin.

And it is further ordered that the said commissioner do report to this Court the value of said bark "Sumatra," her tackle, apparel and furniture and freight then pending, as herein directed, and of the interests of said petitioners therein respectively, and that, upon the coming in of said report, and the confirmation of the same, the said petitioners give stipulations, with sufficient sureties according to the course and practice of this Court, on the bonding of vessels, in the amount of the value of their interests, respectively, in said bark "Sumatra," so appraised and reported as aforesaid, and that such stipulations be for the benefit of said Patrick Curtin in case he shall establish the liability of said petitioners, or any of them, and of all persons and parties who may by due proceedings in this Court, show themselves entitled to any damage by reason of the accident on board said bark "Sumatra," as aforesaid, or any loss or damage sustained in consequence of, or arising from, or growing out of the same.

And it is further ordered that in the meantime, and until the further order of this Court, said Patrick Curtin, who has commenced suit as aforesaid, and ————, his attorneys, and all other persons or parties, are hereby restrained and enjoined from the further prosecution of said suit in the Superior Court in and for the city and county of San Francisco, State of California, and of all or any suits against said petitioners or either of them, in respect to any claims, or loss, or damage occasioned, incurred, or arising out

of, or in consequence of, the falling of said Patrick Curtin down said hatchway, either in the Courts of the State of California, or in the United States Courts, or elsewhere.

————,
Judge.

(a) Desty's Fed. Proc., sec. 52.

No. 173.

Decree Limiting Liability. (a)

(Caption, Form No. 130.)

On reading and filing the libel and petition of Z., owner of the (ship) "————," wherein it is shown (state material parts of petition), and the monition heretofore issued in this matter being duly returned, and on reading and filing all the proceedings heretofore had in this cause [if claims have been filed say, and also a stipulation on the part of the petitioners whereby they decline to contest the several claims presented under the monition, or the amount allowed or to be allowed therefor, and waiving the reservation in that behalf contained in said monition], or [and the said petitioner having duly made and filed in the office of the clerk of said Court his stipulation, with sureties, for the payment into Court of the amount of the appraised value of his interest in the said steamship "————," and her freight for the voyage, pursuant to law and the rules and practice of said Court], or [and the said petitioners having paid into the registry of this Court the sum of $————, being the amount of the duly appraised

value of his interest in the said (ship) and her freight for the voyage], or [and the said (ship) having been sold by order of the said Court, her proceeds, to wit, the sum of $——, being now in the registry of this Court, and the amount of the freight pending on the said voyage having been ascertained to be $——, and the said petitioner having paid the said sum into the registry of this Court].

And after hearing ————, Esq., proctor for the petitioner, and ————, proctors for claimants herein, and all the proceedings being regular and in accordance with the rules and practice of this Court, on motion of ————, proctor for the petioner,

It is now ordered, adjudged, and decreed that the liability of the said Z Company, owner of the said (ship) "————," for any loss, damage, or injury, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred, without the privity or knowledge of the said owners, the aforesaid petitioners, for or by reason of the (describe nature of accident causing the damage) of the said (ship) "————," on the —— day of ———, 18——, at or near (locality) ————, mentioned in the petition herein, be and the same is hereby declared and limited at the said sum of $——, being [the aforesaid duly appraised value of the said interest of said petitioner as owner in said (ship) and her freight for the voyage], or [the aforesaid proceeds of sale of the said ship and the said ascertained amount of the freight pending on the said voyage, and paid into Court as aforesaid].

And the payment of said sum into Court as aforesaid is hereby declared, adjudged, and decreed to be in full compensation of said limited liability of said petitioner, and that he be and is hereby discharged

of and from all further and other liability by reason of any of the matters in the said petition hereinbefore recited, contained, and the stipulation of the libelant for such payment and for costs be and the same is hereby canceled and discharged, and the several sureties on such stipulations are hereby released and discharged from all liability, joint or several, thereon.

And it is further ordered and adjudged that the several claimants who have appeared and proved their claims, and all other persons whomsoever, claiming for loss and damage by reason of the aforesaid ————, and loss of the aforesaid (ship) "————," as aforesaid, and their several servants, agents, proctors, advocates, and counselors, be and they are hereby severally and respectively perpetually enjoined and restrained from commencing, bringing or instituting, or further prosecuting any suit or suits whatever, upon any cause of action whatever, for any loss, damage or injury, done, suffered or occasioned, by reason of said ————, and loss of said (ship) "————," on the day and year and at the place, for this purpose hereinbefore stated and mentioned.

And it is further ordered, adjudged and decreed, that out of said moneys so paid into the registry of this Court as aforesaid, the clerk do pay the taxable costs, charges and disbursements of the petitioners, the clerk of this Court, the marshal of this District, and Commissioner M. N., amounting to $——, and that, as to the residue of said moneys, after such payments, all further directions for distribution be and they are hereby reserved.

Dated this, etc.

————.

Judge.

(a) Desty's Fed. Proc., sec. 52.

No. 174.

Order to File Mandate.

[Title of Court (District) and Cause.]

Now, at this day, come the respondents, by Mr. M. N., of counsel, and present to the Court the mandate of the United States Circuit Court of Appeals for the ———— Circuit, which mandate is in words and figures, to-wit: (Copy of mandate and costs.)

Whereupon it is ordered that said mandate be filed.

————,
Judge.

No. 175.

Order on Mandate and Decree.

[Title of Court (Circuit) and Cause.]

Now, at this day, comes the above-named A B, libelant of the steamship "Union," and claimant of the ship "State," and the intervenors above named, by Mr. ————, of counsel, and present to the Court the mandate of the Supreme Court of the United States, in this cause, now on file, which mandate is in words and figures as follows, viz: (Follows copy of the mandate.)

And thereupon said libelant, A. B., and said intervenors, move the Court for a decree herein in accordance with said mandate:

It is, therefore, pronounced and decreed that the decree of the Court heretofore entered in this cause

on the —— day of ———, 18——, be, and the same is hereby, reversed; that said claimant do now, within thirty days from this date, pay into the registry of this Court the sum of $——, being the total amount of damages sustained by the ship "State," together with interest thereon from ——— ——, 18——, the date of the decree in this cause in the District Court, at the rate of eight per cent per annum, amounting in all to the sum of $———; and together with the costs and disbursements of said libelant, A. B., in said District Court, and in this Court taxed at $——, and his costs and disbursements in said Supreme Court taxed at $———; and that in default thereof execution issue against M. N., and the estate of O. P., stipulators on the bond given in this cause for the release of said steamer "Union," and against Q. R. and S. T., stipulators on the bond of said claimants on appeal to said Supreme Court and against said claimant, the C. D. Co., therefor; and it is further adjudged and decreed that the clerk of this Court distribute said sums as follows:

First: To the payment of the costs and disbursements of said libelant, A. B., in said District Court, in this Court and in said Supreme Court, and

Second: To the payment of the further sums due said libelant, A. B., for damages to said ship "State"; and it is further adjudged and decreed that said claimant, the C. D. Co., do have and recover against said intervenors, A. B. et al., its costs and disbursements in said Supreme Court, taxed at $———, and that it have execution therefor; and it is further adjudged and decreed that said mandate be transmitted to said District Court, with direction to enter the same and to consider the libels of intervention heretofore duly filed in said District Court, in this cause, by A. B. et al., and R. S. and T. V., administrator of

the respective estates of F. G., and H. I., as original libels filed against the steamer "Union," as of the respective dates of the original filing in said Court of said libels of intervention and to issue due process thereon for the arrest of said steamer "Union."

(Signed) ————,
Judge.

No. 176.

Decree in District Court After Mandate. (a)

[Title of Court (District) and Cause.]

Now, at this day, comes the above-named A. B., libelant of the steamship "Union," and claimant of the ship "State," and the intervenors above-named, by Mr. ————, of counsel, and present to the Court the mandate of the Supreme Court of the United States, in this cause, now on file, which mandate is in words and figures as follows, viz: (Here follows a copy of the mandate.)

And thereupon said libelant, A. B., and said intervenors, move the Court for a decree herein in accordance with said mandate:

It is, therefore, pronounced and decreed that the decree of this Court heretofore entered in this cause on the —— day of ————, 18——, be, and the same is hereby, reversed; and that the libels of intervention heretofore duly filed in this Court and cause of A. B. et al., and R. S., and T. V., administrator of the estates of F. G., deceased, and H. I., deceased, be considered and taken to be original libels filed against said steamer "Union," as of the respective dates of

the filing of the original libels of intervention, and that due process issue thereon for the arrest of the said steamer "Union."

_____,
Judge.

(a) See Form No. 175.

Section XII.

PETITIONS.

No. 177.

Petition of Administratrix to Prosecute Suit for Deceased Libelant. (a)

[Title of Court and Cause.]

To the Honorable, etc.

And now, by her attorneys, Messrs. Andros & Frank, comes Mary O'Connell, and suggests to, and informs this Honorable Court here, that since the filing of the libel in the above-entitled cause, Thomas O'Farrell, the libelant therein, became deceased to-wit, on or about the seventeenth day of June, 1896.

And the said Mary O'Connell further suggests to, and informs the Court here, that on the twenty-ninth day of July, 1896, she was duly appointed by the Superior Court of the county of Alameda, State of California, administratrix of the estate, goods, effects, and credits, which were of the said Thomas O'Farrell, deceased, at the time of his death, who died intestate, and that letters of administration were by said Court duly issued to her.

And she, the said Mary O'Connell, brings into Court here, a duly authenticated copy of said letters of administration issued to her as aforesaid, whereby it fully appears that she was duly appointed the administratrix of the estate, etc., of the said Thomas O'Farrell, deceased.

And she further represents that said letters of administration have never been revoked or annulled, but are still in full force and effect, and under and by virtue of the same, she is now remaining the sole administratrix of the estate, etc., of the said Thomas O'Farrell, deceased.

Wherefore, the said Mary O'Connell, administratrix as aforesaid, prays the Honorable Court here, that she be made a party to the record in said cause in this Court now remaining, as libelant in the place and stead of the said Thomas O'Farrell, deceased.

MARY O'CONNELL,
By her attorneys, ANDROS & FRANK.

(a) Desty's Fed. Proc., sec. 479; Dist. Ct. R. 6.

No. 178.

Petition of Receiver for Order Directing Marshal to Return Steamboat.

[Title of Court and Cause.]

Now comes N., receiver of the A. B. Company, and alleges:

That on or about ————, 18—, the A. B. Company, a corporation duly organized and existing under and by virtue of the laws of the State of———

———, made, executed, and delivered to the X. Y. Company, a corporation duly organized and existing under and by virtue of the laws of the State of ——— ——, a deed of trust of all of the property of the said A. B. Company, to secure, etc. (allege purpose of deed of trust and proceedings leading to the appointment of N. as receiver), of the A. B. Company and of all of its property; that said N. duly qualified as such, and entered into the possession of the property of the said A. B. Company; that among other property owned by the said A. B. Company at the time of the execution of the said deed of trust, and thereby conveyed, was the steamboat "Union"; that the home port of the said "Union" was the port of ——— ———, ————, and the said steamer "Union," at the time of making of said deed of trust, was enrolled or registered at the office of the collector of customs for the port of ————, ————, and that the said deed of trust so made, as aforesaid, to the said X. Y. Company, was recorded in the office of the said collector of customs at the port of————, ————; that some time prior hereto, the marshal of this Court entered upon the said steamer "Union," and took possession of the same, and has since remained in the possession of said steamer and has excluded your petitioner therefrom; that said marshal has represented that the said boat was so taken into his possession as a result of process issuing out of this Court and in the above-entitled suit.

Your petitioner further represents that no libel against the said steamer "Union" has been filed in the clerk's office of this Court in this or in any other suit; that no warrant of arrest of the said steamer "Union" has ever been issued in this suit calling upon the owners or persons claiming the said steamer "————" to answer any libel filed in this or in any other suit.

Wherefore, your petitioner prays that the said marshal be directed to return the said steamer "Union" to the possession of your petitioner, and that any alleged warrant of arrest undertaken to be issued against the said steamer "Union" may be, by the order of this Court, recalled, set aside and held for naught, and your petitioner will ever pray.

N,

Receiver

————,

Proctors for Petitioner.

District of ————, }
County of ————. } ss.

I, N., being duly sworn, depose and say that I have read the foregoing petition and know the contents thereof, and the same is true, as I verily believe.

N.

Subscribed and sworn to, etc.

No. 179.

Petition to Bring in Vessel Under Admiralty Rule 59. (a)

To the Honorable, etc.

The petition of Z, sole owner of the ship "Union," against the steam tug "Wasp," her engines, boilers, machinery, tackle, apparel and furniture, and against all persons claiming any interest therein, in a cause of collision, civil and maritime, alleges as follows:

I.

The petitioner was at the times hereinafter mentioned, and is now, the sole owner of the ship "Union," which is a ———— vessel hailing from ——— ———, of ——— tons register, and was, up to the time of the collision hereinafter mentioned, tight, staunch, and strong, and in every respect seaworthy.

II.

(Set forth facts of collision between ship in tow of tug, and ————, as the case may be.)

III.

Said collision was not caused, or in any way contributed to, by any negligence on the part of the petitioner, or of those in charge of said ship, but was caused by the negligence of said steam tug "Wasp" in the following respects, among others (state them).

IV.

On or about the —— day of ———, 18——, A. B. filed a libel and commenced a suit in this Court against said ship "Union," her tackle, apparel and furniture, only, for damages, alleged to have been sustained by said A. B., by the collision aforesaid, in the sum of $———, and on or about the —— day of ———, 18——, the petitioner duly filed in said cause a claim to said ship "Union," her tackle, apparel, and furniture, with the stipulation for costs required by the rules and practice of this Court, and also a stipulation in the sum of $———, the agreed value of the said ship. Your petitioner has not yet filed his answer to said libel, the process not having yet been returned.

And your petitioner alleges that the said steam tug, her engines, boilers, machinery, tackle, apparel and furniture, ought to be proceeded against for said damages, in the same suit as the said ship "Union."

V.

The said steam tug "Wasp" is now within this district and within the jurisdiction of this Court.

VI.

All and singular the premises are true and within the jurisdiction of the United States and of this honorable Court.

Wherefore, your petitioner prays that process may issue according to the practice of this Court and the rules of the Supreme Court in admiralty against the said steam tug "Wasp," her engines, boilers, machinery, tackle, apparel and furniture, to the end that the said tug may be proceeded against in this suit for the damage alleged to have been sustained by the libelant, A. B., as if said tug had been originally proceeded against herein. And the petitioner further prays that all persons claiming any interest in said tug "Wasp" may be cited to appear and answer the libel herein and this petition, and that the said tug "Wasp" may be condemned and sold to satisfy the claim of the libelant for damages, if any, with interest and costs, and also the costs of the petitioner herein, and that the petitioner may have such other and further relief as may be proper.

(a) See Ad. R. 59.

No. 180.

Petition for Rehearing. (a)

[Title of Court and Cause.]

To the Honorable, etc.

The petition of Charles P. Doe, managing owner of the steam schooner "Weeott," and Albert Meyer, managing owner of the steam schooner "Emily," respectively represents to the Court:

That on the twenty-fifth day of September, 1893, this Court ordered its decree to be entered in the above entitled cause in favor of the libelants and intervenors and against the steamship "Bawnmore," for the sum of $12,000, and that as between the libelants, owners of the said steam schooners, and the various intervenors comprising the crews of the said vessels, the same should be divided in the proportion of $6,000 to said libelants, and $6,000 to all of said intervenors, in proportion to the wages received by them as members of said crews.

The petitioners respectfully represent that the question of the relative merit of the services of the two salving vessels was not discussed before the Court because the same were amicably agreed upon as between themselves. They further represent that it appears by the evidence in the case that the steamer "Weeott" by reason of the services rendered by it in helping to salve said steamship, expended seven days, at the cost to her owners, exclusive of earnings lost, of $490 00
Incurred damage 300 00
Paid "Rescue" 406 00

$1,196 00

That the "Emily" lost the same amount of time and incurred expenditure of nearly $1,005.00.

That all of this amount so disbursed by the "Emily," and a large part of that expended by the "Weeott" was expended in wages and sustenance of the respective crews of the vessels. That after deduction of such expense from the award made to the vessels, the amount remaining to each vessel (if they were to share alike in such award) would be less than $2,000 to each, from which amount there would have to be deducted the ordinary earnings of the vessel during the period of her delay in order to ascertain the bounty which the Court allows for the risk run by the property of the owners in rendering the salvage service. That, after such deduction, leaving out of consideration the wear and tear of the hawsers of the vessels, the petitioners respectfully represent that the salvage bounty to them is disproportionately small as compared with the amount allowed to the officers and seamen of said vessels.

The petitioners respectfully represent that no personal risk was run by the officers or crew, but that the property of these petitioners, which was uninsured except to a small degree, was placed in actual risk and danger in entering and leaving Caspar creek.

The petitioners beg to call the attention of the Court to the fact that the allowance of salvage to them is small in proportion to what they had at stake, whereas most of the officers and crews of the salving vessels are receiving for one week's service: First—their usual pay and sustenance, to the payment of which the property of the petitioners was pledged, whether the salvage service succeeded or failed; second—a bounty of several months' additional pay.

The petitioners represent that the method of distribution of the award ordered by the Court is not

supported by the decisions in admiralty heretofore rendered.

These matters, and others pertinent thereto, the petitioners respectfully pray may receive the consideration of the Court, and for that purpose they ask that a rehearing thereof be granted, and that, pending the hearing on this petition, all further proceedings in this cause be stayed.

And your petitioners, etc.

ANDROS & FRANK,
PAGE, EELLS & WHEELER,
For petitioners.

(a) From the unreported case of Doe v. "The Bawnmore," in the District Court for the Northern Division of California. A rehearing was granted on the above petition. See "The Fortitude,'" 2 Dods. 70; Desty's Fed. Proc., sec. 478; Eq. R. 88.

Section XIII.

EXCEPTIONS.

No. 181.

Exceptions to Libel. (a)

[Title of Court and Cause.]

To the Honorable, etc.

E. McNeill, receiver of the Oregon Railway & Navigation Company, the claimant of the steamer "Oregon," excepts and objects to the libel of James Laidlaw, administrator of the estates, respectively, of

Charles Austin and Matthew Reed, deceased, and for cause of exception alleges:

1. That it doth appear by the said libel that whatever claim or right existed in favor of said deceased persons has not been separately stated, and that it doth appear from the same that whatever claim said deceased persons or either of them have, if any, is several, and not joint.

2. That the claims of said several deceased persons, and either of them, are not such as entitle said Laidlaw, as administrator of the said deceased persons, or either of them, to any relief herein, as the same are set up by said libel or otherwise, and do not constitute facts sufficient to enable the said administrator to make any claim against the said steamer in this Court on behalf of the said deceased persons, or either of them.

3. That the said libel is insufficient and informal in that it is not verified as required by the rules and practice of this Court.

4. That so much of article seven of said libel as doth charge and say as follows: "And if there was any other negligence, inattention, or lack of skill, tending to, or in connection with, the said collision, it was the negligence, inattention, and want of skill of said steam tow-boat 'Oklahama,' and said Empkin and others in charge of said tow-boat in placing said ship 'Clan Mackenzie' in said anchorage, and in leaving her at anchor alone," is scandalous and impertinent.

5. That the said libel shows that this Court has no jurisdiction of the claims of the said deceased persons, or of either of them, or of said Laidlaw, as administrator of the said deceased persons, or either of them.

6. That no maritime or other lien against the steamer "Oregon" exists in favor of said James Laidlaw as administrator of the estates of said deceased persons, or either of them.

7. That the claim of the said Laidlaw as the administrator of the said deceased persons, and each of them, is stale, and is barred by the laches of the said Laidlaw.

(Here follow special averments of the laches alleged.)

That it would be inequitable and unjust, and subject the said Oregon Railway & Navigation Company and its creditors to great hardship to allow the claims presented by the libel herein to be enforced at this time against the said steamer "Oregon."

COX, COTTON, TEAL & MINOR.

United States of America, }
District of Oregon. } ss.

E. McNeill, being duly sworn, says that he is the receiver of the Oregon Railway & Navigation Company and the claimant of the steamer "Oregon"; that the facts set forth in the foregoing exceptions are true.

E. McNEILL.

Subscribed and sworn to, etc.

(a) Ad. R. No. 36.

No. 182.

Answer to Exceptions.

[Title of Court and Cause.]

To the Honorable Charles B. Bellinger, Judge of the District Court of the United States for the District of Oregon:

Now comes James Laidlaw, administrator of the estates, respectively, of Charles Austin, deceased, and Matthew Reed, deceased, the libelant herein, and, not admitting that articles 1, 2, 3, 4, 5, and 6 of the exceptions heretofore filed herein by E. McNeill, receiver of the Oregon Railway & Navigation Company, the claimant of the steamer "Oregon" herein, are well founded in point of fact or in law, and reserving the right to contest the sufficiency thereof at the hearing of the same, and further reserving the right to contest the sufficiency of article 7 of said exceptions in point of fact and in law, and to amend his libel herein so as to meet each, any or all of said exceptions, for an answer, in the nature of a replication, to the special plea set up in said article 7 by exceptive allegations, setting up laches on the part of this libelant:

Denies that the claims of libelant are stale or are barred by his laches (here follow special denials of laches alleged); and that no injustice would be done to the said Oregon Railway & Navigation Company or its creditors, and said corporation and its creditors would be subject to no hardship or inequality, by the enforcement at this time of the claims against the said steamer "Oregon" presented by the libel herein.

And this libelant further alleges that the filing of his libel against the said steamer "Oregon" was within one year after the libelant's cause of action against

said vessel had accrued; and that said vessel was not rearrested by this libelant only because of the ruling of the District and Circuit Courts of the United States for the District of Oregon to the effect that the stipulation filed by the claimant of said steamer "Oregon" in the said suit of said John Simpson stood as and in place of and as a substitute for the said steamer, and that no rearrest of said steamer was necessary or proper in the premises.

And this libelant prays that all other affirmative allegations contained in said article 7 of said exceptions may be considered as traversed and denied by this libelant, and he denies the same; and further prays for a decree herein as prayed for in his libel.

STOTT, BOISE & STOUT,
WILLIAMS, WOOD & LINTHICUM,
Proctors for libelant.

No. 183.

Exceptions to an Answer. (a)

[Title of Court and Cause.]

Exceptions taken by the libelant to the answer of Z to the libel of A in a cause of contract, civil and maritime:

First. That the respondent has not well and sufficiently set forth whether in pursuance of the agreement mentioned in the third article of the said libel the said ship "————" set sail from ———— to ————, on the —— day of ———, 18——.

Second. For that the respondent has not well and sufficiently answered the interrogatory propounded in the fourth article of the said libel, to wit, ————, but has entirely evaded the same, and has neglected to give any answer whatever thereto.

In all of which particulars the said answer is imperfect, insufficient, and evasive, and the libelant therefore excepts thereto and prays that the Court will direct the said Z to put in a further and better answer.

————,
Proctor for libelant.

(a) See Ad. R. 28; Ad. R. 36.

No. 184.

Exceptions to Commissioner's Reports. (a)

[Title of Court and Cause.]

Exception on the part of the libelant to the report of Southard Hoffman, Esq., a United States commissioner in this cause, dated August 14, 1890.

Exception: That the award or allowance of $1,000 to the libelant is utterly inadequate and insufficient to compensate him, the libelant, for his injuries and sufferings as disclosed by the testimony adduced before the said commissioner and reported to this honorable Court.

Dated ———.

————,
Proctors for libelant.

(a) The Alejandro, 56 Fed. Rep. 621; 15 U. S. App. 98; Ad. R. No. 55.

Section XIV.

APPRAISERS.

No. 185.

Oath of Appraisers. (a)

[Title of Court and Cause.]

We, the undersigned, having been appointed appraisers to appraise the steamboat "Union," do solemnly swear that we will faithfully appraise the same to the best of our skill and ability.

————————.

————————.

————————.

Subscribed and sworn to by ————————, before me this —— day of ————, 18——.

————————.

(a) Desty's Fed. Proc., sec. 60; see Ad. R. 10 and 11; Dist. Ct. R. 27, 28, 29, 30.

No. 186.

Appraisement. (a)

In the District Court of the United States for the District of ————————.

Appraisement of Steamboat "Union."

The undersigned, appointed by the Honorable Judge of said Court to appraise the steamer "Union," and, having examined said steamer, do hereby appraise and determine the value of said steamer at ———————— dollars, and respectfully submit such appraisement to said Court.

Dated this —— day of ————, 18——.

(a) See Ad. R. 11.

No. 187.

Return of Appraisers. (a)

To the Honorable, etc.

We, the undersigned, appointed by the Court to appraise the property in the annexed writ described, having been first duly qualified, have, in obedience to said writ, appraised the items of property therein mentioned as the same are now in the custody of the marshal at the sums placed opposite the same respectively in the following schedule and inventory, amounting in the aggregate to $————.

Dated at ————, this —— day of ———, 18——.

————,
Appraisers.

Inventory and appraisement of the ship "Mary Jane," her tackle, apparel, and furniture, and the cargo laden aboard of said ship:

Ship "Mary Jane," her tackle, etc.....$7,894
500 barrels flour @ ——— per barrel.....———
800 bags coffee @ ——— per bag.....———
———
Total..... ....———

(a) See Ad. R. 10 and 11.

Section XV.

MISCELLANEOUS.

No. 188.

Verification by Proctor for Absent Libelants. (a)

United States of America,
Northern District of California. } ss.

F. R., being duly sworn, deposes and says that he is one of the proctors for the libelants in this libel of intervention; that all of said libelants are absent from the United States; that affiant is authorized to act for them herein, and that the foregoing libel of intervention is true according to his information and belief.

F. R.

Subscribed and sworn to, etc.

(a) Dist. Ct. R. 1.

No. 189.

Substitution of Claimant. (a)

(Caption)

[Title of Cause.]

In this cause, on motion of ————, Esq., proctor for the claimants, and who suggested to the Court the death of Robert W. Simpson, one of the claimants herein, it is by the Court now ordered that A. M. Simpson and George P. Simpson, executors of Robert W. Simpson, deceased, be and they are hereby substituted as claimants of the bark "Portland," her tackle, apparel, and furniture, in the place and stead of Robert W. Simpson, deceased.

(a) Dist. Ct. R. 9.

No. 190.

Praecipe for Monition. (a)

United States District Court for the District of Washington.

GASTON JACOBI, et al.,
vs.
STEAMSHIP "EUGENE." } No. 1,128.

To the Clerk of the above-entitled Court:

You will please issue monition and attachment, and deliver same to marshal for service.

JOHN J. EASLY.
JOHN C. HOGAN.

(a) Ad. R. 1, 4, 3.

No. 191.

Verification of Claim by Agent. (a)

M G, being first duly sworn, deposes and says that no other persons except said (claimant) are owners of said vessel above-named, her tackle, apparel, and furniture, or of any part thereof, and that no other person except said (————) has any right or control over said vessel; and he further says that he is duly authorized by the said owners to put in the above claim.

Sworn this —— day of ———, etc.

(a) Ad. R. 26.

No. 192.

Verification of Claim—Libel in Rem. (a)

M. G. de la Mata deposes and says that he was and is the master of said vessel and at the time of said arrest thereof he was in possession of the same as the lawful bailee thereof for the said owner, and that the said owner resides out of the said Northern District of California, and more than one hundred miles from the said city of San Francisco, in said district.

Sworn to this ———, etc.

(a) Ad. R. 26.

No. 193.

Return in Case of Admiralty Seizure. (a)

United States of America, }
District of Oregon. } ss.

In obedience to the command of the within writ, I did, on the seventeenth day of June, 1895, at the port of Portland, in the District of Oregon, arrest the within-named vessel, the steamer "Oregon," by going on board of her and seizing and arresting her and taking said steamer into my custody, together with her tackle, apparel, and furniture, and I served a duly certified copy of this writ at same time upon Captain Pohlman, who is captain of said steamer and in charge thereof. I also posted a duly certified copy thereof in a public place in plain view of said steamer.

I served upon Captain Pohlman, who is captain of said steamer, personally, a duly certified copy of the libel in the therein-entitled cause at Portland, on the seventeenth day of June, 1895. I further caused to be published in the "Daily Telegram," in the said District of Oregon, for fifteen consecutive publications, exclusive of Sundays, the following notice and citation hereto affixed and made a part of this return:

United States Marshal's Notice.

Admiralty Seizure.—The Steamship "Oregon."

Citation.

United States of America, } ss.
District of Oregon. }

Whereas, a libel has been filed in the District Court of the United States for the District of Oregon, on the seventeenth day of June, 1895, by Williams, Wood & Linthicum, proctors on behalf of James Laidlaw, administrator, as libelant, in a cause of tort, civil and maritime, against the steamship "Oregon," her tackle, apparel, and furniture, and praying the usual process and monition of the Court, that all persons interested in said steamship, her tackle, apparel, machinery, and furniture may be cited to appear and answer the premises, and, all due proceedings being had, that the said steamship may be decreed to be sold, and the proceeds thereof distributed according to law.

Therefore, in pursuance of said monition under the seal of the said Court, to me directed and delivered on the seventeenth day of June, 1895, I do hereby give notice generally unto all persons having, or pre-

tending to have, any right, title, or interest in the said steamship called the "Oregon," her tackle, apparel, machinery, and furniture, to appear before the said Court, in the city of Portland, in said district, on the fifth day of August, 1895, next (if it be a court day, or else on next court day thereafter), at ten o'clock forenoon of said day, then and there to answer the said libel, and to make known their allegations in that behalf.

Dated at Portland, in said District, this seventeenth day of June, A. D. 1895.

H. C. GRADY,
United States Marshal for the District of Oregon.
WILLIAMS, WOOD & LINTHICUM,
Proctors for James Laidlaw, Administrator.

Subsequently, and on the seventeenth day of June, 1895, upon claim being filed by Edwin McNeill, and the said claimant having given a good and sufficient bond in double the amount claimed by the libelant, to-wit, in the sum of $5,566.18, which bond was duly approved by Charles B. Bellinger, U. S. District Judge, conditioned to abide by and answer the decree of the Court in said cause, I released said steamer, the "Oregon," to said claimant, upon said bond aforesaid, with her tackle, apparel, and furniture. The above-mentioned bond is herewith returned.

Dated at Portland, Oregon, this eighteenth day of June, 1895.

HENRY C. GRADY,
U. S. Marshal.
By Geo. Humphrey,
Deputy.

(a) Dist. Ct. R. 15-34.

No. 194.

Praecipe for Appearance for a Claimant.

[Title of Court and Cause.]

To the clerk of the above-entitled Court:

You will please enter our appearance as proctors for claimant and owner in the above-entitled cause.

A. & F.

No. 195.

Commissioner's Report. (a)

[Title of Court and Cause.]

The above case was referred to me by order of the honorable District Court of the United States, ———— District of ————, to ascertain and compute the damages sustained by libelant.

I was attended at various dates by proctors for libelant and claimant and by witnesses. The testimony by me taken is hereto annexed and made part hereof.

(State résumé of facts.)

I respectfully report that the libelant is entitled to have and recover from claimant the amounts as follows:

(State amounts.)

Respectfully submitted,

————,

Commissioner, etc.

(a) Ad. R. 44.

No. 196.

Affidavit of Circumstances on Motion for Sale of Ship and Cargo as Perishable. (a)

[Title of Court and Cause.]

A, one of the libelants in this cause being sworn, says:

That the ship "————" is now at wharf in the port of ————, subject to large and increasing expense for wharfage, keeper's fees, and other expenses; that she is in a damaged condition, and requires care and repairs; that a large portion of her cargo is perishable, being sugar, and in a wet and damaged condition; that the only claims that have been interposed (state them); that in deponent's opinion the interests of all parties concerned will be promoted by a speedy judicial sale of the said ship, her tackle, apparel, furniture, and cargo, the proceeds of such sale to be brought into Court for the benefit of whom it may concern, subject to the further order of the Court.

Sworn, etc.

(a) Ad. R. 10; Dist. Ct. R. 33.

No. 197.

Petition by United States Marshal for Compensation as Caretaker. (a)

[Title of Court and Cause.]

Comes now WG, United States marshal for the ———— District of ————, and shows to this honorable Court that on ————, 18—, a monition was

duly issued from the United States District Court in the above-entitled cause. That under and by virtue of said monition he attached the said British steamer "————" (then lying about one mile above the city of Benicia in this District); that he has retained the possession of said steamer since said time until the present time; that it was necessary during a greater part of said time to have two keepers on said vessel; that said vessel had to be changed from her location, as she drifted with the wind, and was in danger of being on the mud; that so great was the danger thought to be that the claimant herein served a personal notice on your petitioner as United States marshal aforesaid, having charge of said vessel, citing the fact that the vessel was lying in a dangerous position, and he, the claimant, would hold your petitioner personally responsible for the safety of said vessel.

Wherefore your petitioner petitions this honorable Court that he be allowed a reasonable compensation for the keeping of said personal property attached and held by him as aforesaid under said mesne process from said ———, 18—, to and including ———, 18—, a period of ——— days.

WG.

Subscribed and sworn to before, etc.

(a) Desty's Fed. Proc., sec. 297.

No. 198.

Order for Marshal's Costs as Caretaker. (a)

[Title of Court and Cause.]

WG, United States marshal of the ———— District of ————, having petitioned this Court, setting forth the facts, under oath, that he, having attached the said vessel under and by virtue of a monition duly issued from this Court in said cause on ———, 18—, be allowed a reasonable compensation for the keeping of said personal property from said date until and including ———, 18—.

It is ordered that under paragraph 2, section 829, Revised Statutes of the United States, the said marshal be allowed the sum of four dollars per day for the keeping of said vessel, attached as aforesaid under said mesne process, from ———, 18—, to ———, 18—, a period of ——— days.

Dated, etc.

————,
Judge.

(a) Desty's Fed. Proc., sec. 297.

No. 199.

Notice of Motion to Set Aside Order Allowing Marshal's Costs as Caretaker.

[Title of Court and Cause.]

To Andros & Frank, proctors for libelant, and WG, United States marshal:

Take notice, that on ——— day, ———, 18—, at —— o'clock A. M., at the courtroom of said Court, A, claimant of the British ship "————," will

move the Court to annul, vacate and set aside the ex parte order of the judge of said Court, allowing the United States marshal four dollars per day compensation for the custody of said steamship.

The motion will be made on the ground that said order is irregular and unwarranted, that it is not in conformity with the rules or practice of said Court, and is repugnant to the statutes of the United States.

Dated ————.

————,
Proctor for Claimant.

No. 200.

Order Denying Motion to Vacate Order Allowing Marshal's Costs as Caretaker.

[Title of Court and Cause.]

In this cause the motion by claimant to set aside the order allowing the United States marshal four dollars per day compensation for the custody of said steamship, and the appeal of the claimant from the taxation of the United States marshal's bill of costs having been argued and submitted to the Court for consideration and decision — now, after due consideration had thereon, it is by the Court now here ordered that said motion to set aside said order be, and the same is hereby denied; and it is further ordered that so much of the item for keeper's fees in the United States marshal's bill of costs as relates to the fees of ———— (engineer), keeper from, etc., amounting to $——, be, and the same is hereby, disallowed, etc.; and it is further ordered that the said United States marshal's bill of costs be, and the same is hereby, taxed at $——.

No. 201.

Consent to Include Other Members of Crew in Libel of Intervention on Salvage. (a)

[Title of Court and Cause.]

It is hereby consented that the libel of intervention of AB, etc., filed in the above cause, shall be considered as including the following names of the six seamen therein mentioned, and that PH, carpenter on board the steamer "Emily" at the times referred to in said libel of intervention, at the wages of $——— per month, be added to said libel of intervention as an intervenor herein.

Names.
"
"

Dated ———, 18—.

H & C,
Proctors for claimants.

———,
Proctor for intervenors.

(a) The Commander in Chief, 1 Wall. 52.

No. 202.

Cost Bill. (a)

[Title of Court and Cause.]

To the clerk of said Court:

Please tax as part of the costs in the above cause the sum of twenty dollars against said respondents

and in my favor as proctor's fee, as allowed by sections 823 and 824 of the Revised Statutes of the United States.

Very respectfully,

M,

Proctor of record for intervenors herein.

United States of America, }
Northern District of California. } ss.

M, being duly sworn, deposes and says that the above cause has been prosecuted to a final hearing; that it is a cause in admiralty; that the intervenors represented in said cause by this deponent each recovered in said cause more than $50; that deponent is therefore entitled to have taxed and allowed him as a proctor's fee herein against said respondents, the sum of $20.

Subscribed and sworn to, etc.

(a) Rev. Stats. U. S., sec. 824; Desty's Fed. Proc., sec. 292.

No. 203.

Writ of Execution after Final Decree. (a)

———— District of ————.—ss.

The President of the United States of America to the marshal of the ———— District of ————. Greeting:

Whereas, a libel was filed in the District Court of the United States for the ———— District of ————, on the thirteenth day of January, 1890, by A, libelant, against the ship "Mars," on which libel process of attachment was issued, and said ship was attached by the marshal; and, whereas, on the

twenty-first day of January, 1890, Y, as principal, and S, as surety, appeared and submitted themselves to the jurisdiction of said Court, and executed a bond stipulation in the sum of $10,000, under the act of Congress of March 3, 1847, and the vessel was thereupon discharged from custody; and, whereas, by the decree of said Court, entered on the ninth day of August, 1890, it was ordered, adjudged, and decreed that the libelant recover against said ship the sum of $3,400 and $297, the interest thereon, with costs, to be taxed, which costs have been taxed at the sum of $130; and it was further ordered that, in pursuance of said act of Congress, a summary judgment should be, and the same was, entered against the said Y and S for the sum of $10,000, the amount of their said bond executed on discharging the said vessel from custody, and that the libelant have execution thereon.

Now, therefore, we command you that of the goods and chattels of the said Y and S, or of the goods and chattels of either of them in your district, you cause to be made the said sum of $3,827, and if sufficient goods and chattels of said Y and S cannot be found within your district that then you cause said sum to be made of the lands and tenements whereof the said Y and S were jointly or severally seized on the said ninth day of August, 1890, or at any time afterward, in whose hands soever the same may be, and have you these moneys, together with this writ, with your doings thereon, before the said District Court at the United States courtroom ————, in the city of ————, on the first Tuesday of ——— next, to render to the said libelant in satisfaction of said decree.

Witness:

————,
Judge of, etc.

(a) Ad. R. 21.

No. 204.

Satisfaction Piece. (a)

[Title of Court and Cause.]

Full satisfaction of the portion of the decree herein in favor of the libelants in the libel herein of Charles P. Doe et al. having been received, the clerk of the above-named Court is hereby authorized and directed to enter such satisfaction of record.

————,

Proctors for Charles P. Doe et al., libelants.

(a) Dist. Ct. R. 63, 65.

No. 205.

Injunction. (a)

United States of America, } ss.
District of ————. }

The President of the United States of America, to ABC, etc., and each of them, their and each of their agents, servants, proctors, attorneys, advocates and counselors, and all other persons who have or made any claim against Z, owner of the steamship "————," hereinafter mentioned, for loss, damage or injury suffered or occasioned by reason of the [state nature of accident, e. g., stranding, burning, etc.] of the said steamship "————," on or near (locality), on the —— day of ———, 18—, Greeting:

Z, owner of the steamship "————," having duly filed his petition in the District Court of the United States for the District of ————, praying for the limitation of liability pursuant to the maritime law and the acts of Congress in such case made and provided for damages, by reason of loss, damages, injury or destruction done, caused or occasioned by the (————) of the steamship "————," on or near (————), on the —— day of ———, 18—, and the said Court having, pursuant to law and the rules and practice of the said Court, duly appraised the value of the interest of the said Z in the said steamship "————," and her freight for the voyage, respectively, and the said Z having duly made and filed in the office of the clerk of the said Court his stipulation, with sureties, for the payment into Court of the amount of his said appraised value of his interest in said steamship and her freight for the voyage, pursuant to law and the rules and practice of said Court, and a monition having been duly issued, pursuant to law and the rules and practice of said Court, citing all persons claiming damages for loss, damage, injury, or destruction as in said petition alleged and set forth, and each of them to appear in said Court on a day specified in said writ, and make due proof of their respective claims on or before the time specified therein, according to law and the rules and practice of said Court, and an order having been duly made, entered, and filed that an injunction issue restraining and enjoining you, the said ABC, etc., and your and each of your agents, servants, proctors, attorneys, advocates and counselors, and each of them, from further prosecuting any suit or suits commenced by you, or any of you, by reason of any of the matters or things set forth in the said petition filed on the —— day of ———, 18—, as well

as from commencing, bringing, or instituting any suit or suits therefor,

Now, therefore, by virtue of the power and authority vested in said Court, and pursuant to the statute in such case made and provided, you and each of you, and your and each of your servants, agents, proctors, attorneys, advocates, and counselors are hereby enjoined and restrained, and you and each of you are hereby commanded to desist and refrain from further prosecuting any suit or suits against the said Z, owner of said steamship "————," or from taking any further steps or proceedings in such action or actions, suit or suits, proceeding or proceedings now pending, as well as from in any manner commencing, bringing, or instituting any suit or suits whatever, upon any cause of action whatever, for any loss, damage or injury done, suffered or occasioned by reason of the said (accident) of said steamship "————."

Witness the honorable, etc.

Dated this —— day of ———, 18—.

(a) Desty's Fed. Proc., sec. 52; Ad. R. 54-58; Rev. Stats. U. S., secs. 4283-4285.

CHAPTER III.

BANKRUPTCY.

Abbreviations used in connection with Forms in Bankruptcy:

B. A., Bankruptcy Act, July 1, 1898.

B. R., Bankruptcy Rules.

E. R., Equity Rules.

No. 206.

[Form No. 1.]

Debtor's Petition. (a)

In the District Court of the United States, for the *Northern* District of *California.*

In the matter of *JOHN DOE*, Bankrupt.	No. ———. Petition by Debtor. Secs. 18 and 59.

To the Honorable ————, Judge of the District Court of the United States, for the *Northern* District of *California:*

The petition of *John Doe*, of *the City of Oakland*, in the county of *Alameda*, and District and State of *California;* ———, *trader*, respectfully represents:

That he has *resided* for the greater portion of six months next immediately preceding the filing of this

petition at *the City of Oakland, County of Alameda,* within said judicial district; (b) that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the acts of Congress relating to Bankruptcy;

That the schedule (c) hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts;

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Acts: (d)

Wherefore your petitioner prays that he may be adjudged (e) by the Court to be a Bankrupt within the purview of said Acts.

JOHN DOE.

_____,
Attorney for Petitioner.

United States of America, }
Northern District of *California.* } ss.

I, *John Doe*, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

JOHN DOE,
Petitioner.

Subscribed and sworn to before me, this —— day of ———, A. D. 1——.

———,

———,

(Official character.)

(a) B. A. §§ 4, 59a; B. A. No. V.

(b) B. A. § 2 (1).

(c) B. A. § 7 a (8).

(d) B. A. § 7 a (8).

(e) B. A. § 18 g.

SCHEDULE A. STATEMENT OF ALL DEBTS OF BANKRUPT. (a)

SCHEDULE A. (1)

Statement of all Creditors who are to be paid in full, or to whom priority is secured by law. (b)

Claims which have priority. (b	Reference to Ledger or Voucher.	Names of Creditors. (c)	Residence (if unknown, that fact must be stated). (c)	Where and when Contracted.	Nature and consideration of the debt, and whether contracted as partner or joint contractor, and if so, with whom. (c)	Amount.	
						$	c.
1. Taxes and debts due and owing to the United States. (d)			*None.*				
2. Taxes due and owing to the State of..... or to any county, district, or municipality thereof. (d)			*None.*				

SCHEDULE A. (1)—*(Continued.)*

3. Wages due workmen, clerks, or servants, to an amount not exceeding $300 each, earned within three months before filing the petition. (e)	*480*	*Abel Murdoch*	*Oakland, California.*	*Oakland, California.*	*Balance of salary as bookkeeper to November 3d, 18—*	*200*	*00*
4. Other debts having priority by law. (f)			*None.*				
					Total.....	*200*	*00*

John Doe, Petitioner.

(a) B. A. §§ 7*a* (8); 39*a* (2) and (6); B. R. No. IX. (b) B. A. § 64. (c) B. A. § 7*a* (8). (d) B. A. § 64*a*. (e) B. A. § 64*b* (4). (f) B. A. § 64*b* (5).

SCHEDULE A. (2) (a)

Creditors Holding Securities. (b)

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and, if so, with whom.)

Reference to Ledger or Voucher.	Names of Creditors. (b)	Residences (if unknown, that fact must be stated). (b)	Description of Securities. (b)	When and Where Debts were Contracted.	Value of Securities.		Amount of Debts.	
					$	c.	$	c.
	Oakland Bank	*Oakland, Cal.*	*Mortgage executed June 22, 18—, for $3,500, interest at the rate of 10 per cent per annum, upon the south half of section three, in township twenty-two, south of range twenty, east of M. D. P. & M., in the County of Alameda, State of California, containing 320 acres.*	*Oakland, Cal., June 22, 18—*	*4,500*	*00*	*3,500*	*00*
				Total.....	*4,500*	*00*	*3,500*	*00*

John Doe, Petitioner.

(a) B. A. § 7*a* (8); B. R No. V. (b) B. A. § 7*a* (8).

SCHEDULE A. (3) (a)

Creditors whose Claims are Unsecured. (b)

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to Ledger or Voucher.	Names of Creditors. (b)	Residence (if unknown, that fact must be stated). (b)	When and Where Contracted. (b)	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom. (b)	Amount. $	Amount. c.
	David Jones...	*San Francisco, Cal.*	*Oakland, Cal., Dec., 18—*	*Borrowed money on promissory note*	*236*	*00*
	John Peterson.	*Fruitvale, Cal.....*	*" " Aug., 18—*	*Purchase of land*	*1,000*	*00*
	Oakland Bank.	*Oakland, Cal.....*	*" " July, 18—*	*Purchase of bank stock*	*750*	*00*
All the following claims of unsecured creditors were contracted as partner with R. W. Potts.						
	J. H. Wilson..	*San Francisco, Cal.*	*Oakland, Cal., July, 18—*	*Surety for Blum & Potts*	*1,000*	*00*
	Peabody & Co..	*Oakland, Cal ..*	*" " Mar., 18—*	*Promissory note for merchandise*	*1,200*	*50*
	Mason Bros....	*Oakland, Cal.....*	*" " Aug, 18—*	*Judgment for partnership indebtedness*	*1,100*	*00*
	Pillsbury & Co.	*San Francisco, Cal.*	*" " Dec., 18—*	*Open account for merchandise..*	*90*	*00*
				Total, *forward*	*5,376*	*50*

John Doe, Petitioner.

(a) B. A. § 7a (8); B. R. No. V. (b) B. A. § 7a (8).

SCHEDULE A. (4) (a)

Liabilities on Notes or Bills discounted which ought to be paid by the Drawers, Makers, Acceptors, or Indorsers.

(N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.	Names of Holders as far as Known. (b)	Residence (if unknown, that fact must be stated). (b)	Place where Contracted. (b)	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom. (b)	Amount. $	Amount. c.
36	*Moses Harris*	*Fresno, Cal.....*	*Oakland, Cal.....*	*Joint promissory note with G. W. Brown .....*	*50*	*85*
				Total.....	*50*	*85*

John Doe, Petitioner.

(a) B. A. § 7a (8); B. R. No. V. (b) B. A. § 7a (5).

SCHEDULE A. (5) (a)

Accommodation Paper.

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.)

Reference to Ledger or Voucher.	Names of Holders. (b)	Residence (if unknown, that fact must be stated.) (b)	Names and Residence of Persons Accommodated. (b)	Place where Contracted. (b)	Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom. (b)	Amount. $	Amount. c.
			None.		Total		

John Doe, Petitioner.

OATH TO SCHEDULE A.

UNITED STATES OF AMERICA, } ss.
Northern DISTRICT OF *California.* }

On this —— day of ——, A. D. 1——, before me personally came *John Doe*, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me, this —— day of ——, A. D. 1——.

(Official character.)

(a) B. A. § 7*a* (8); B R. No. V. (b) B. A. § 7*a* (8).

SCHEDULE B. STATEMENT OF ALL PROPERTY OF BANKRUPT. (a)

SCHEDULE B. (1)

Real Estate.

Location and Description of all Real Estate owned by Debtor, or Held by Him. (b)	Encumbrances thereon, if any, and Dates thereof. (b)	Statement of Particulars Relating thereto. (b)	Estimated Value. $	c.
The south half of section three, in township twenty-two, south range twenty, east of M. D. B & M., in Alameda County California, containing (320) three hundred and twenty acres.	*Mortgage dated June 23, 18—, in favor of Oakland Bank, to secure the payment of a promissory note for $3,500, with interest at the rate of ten per cent per annum from its date until paid*	... ...	*4,500*	*00*
		Total...	*4,500*	*00*

John Doe, Petitioner.

(a) B. B. § 7*a* (8); B. R. No. V. (b) B. A. § 7*a* (8).

SCHEDULE B. (2) (a)

Personal Property. (b)

		$	c.
a.—Cash on hand	*None.*		
b.—Bills of exchange, promissory notes, or securities of any description (each to be set out separately)	*Promissory note, dated at Oakland, Cal., April 11, 18—, payable June 1st after date, for $200, with interest from maturity at the rate of 1 per cent per month, compounded monthly, executed by A. A. Jones, a resident of San Francisco, Cal.*	*200*	*00*
	(Set out other notes in the same way, to be s ated separately, and, if necessary, a schedule to be made and attached here, with a note stating their actual value as estimated, and reasons for the estimate.)		
c.—Stock in trade, in —— business of ——, at —— of the value of	*None.*		
d.—Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz.	*Two suits of clothes, belonging to self, and underwear, etc*	*25*	*00*
e.—Books, prints, and pictures, viz	*None.*		
f.—Horses, co s, sheep, and other animals (with number of each), viz.	*None.*		
	Total, *forward*	*225*	*00*

SCHEDULE B. (2)—*(Continued.)*

			$	c.
		Brought forward.....	*225*	*00*
g.—Carriages and other vehicles, viz.....	*None.*			
h.—Farming stock and implements of husbandry, viz.	*None.*			
i.—Shipping, and shares in vessels, viz.....	*None.*			
k.—Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.....	*None.*			
l.—Patents, copyrights, and trademarks, (c) viz.....	*None.*			
m.—Goods or personal property (d) of any other description, with the place where each is situated, viz.....	*None.*			
		Total.....	*225*	*00*

John Doe, Petitioner.

(a) B. A. § 7*a* (8); B. R. No. V. (b) B. A. § 70*a*. (c) B. A. § 70*a* (2). (d) B. A. 7*a* (8).

SCHEDULE B. (3) (a)

Choses in Action. (b)

		$	c.
a.—Debts due petitioner on open account	*(If many, attach a slip as follows:)* *The following open book accounts are due to petitioner from the following-named persons for merchandise sold and delivered to them:* *Peter Doe, Oakland, Cal.* $4 25 *Richard Roe, Oakland, Cal.* 20 50 *Jane Black, San Francisco, Cal.* 32 48	*57*	*23*
	(If any debts are statute-barred, so state, and value accordingly.)		
b.—Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds	*Thirty shares in Oakland Bank*	*500*	*00*
c.—Policies of insurance (c)	*None.*		
d.—Unliquidated claims of every nature, with their estimated value	*None.*		
e.—Deposits of money in banking institutions and elsewhere	*None.*		
	Total	*557*	*23*

John Doe, Petitioner.

(a) B. A. § 7*a* (8); B. R. No. V. (b) B. A. § 70*a* (6). (c) B. A. § 70*a* (5).

SCHEDULE B. (4) (a)

Property in Reversion, Remainder, or Expectancy, including Property Held in Trust for the Debtor or Subject to any Power or Right to Dispose of or to Charge. (b)

(N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.)

General Interest.	Particular Description.	Supposed Value of My Interests.	
		$	c.
Interest in land	*None.*		
Personal property	*None.*		
Property in money, stock shares, bonds, annuities, etc.	*None.*		
Rights and powers, legacies and bequests	*None.*		
	Total		

SCHEDULE B. (4)—*(Continued.)*

General Interest.	Particular Description.	Amount Realized from Proceeds of Property Conveyed.	
		$	c.
PROPERTY HERETOFORE CONVEYED FOR BENEFIT OF CREDITORS.			
What portion of debtor's property has been conveyed by deed or assignment, (c) or otherwise, (d) for benefit of creditors; date of such deed, name and address of party to whom conveyance; amount realized therefrom, and disposal of same, so far as known to debtor.....	*None.*		
What sum or sums have been paid to counsel, and to whom, for services rendered, or to be rendered, in this bankruptcy (e).....	*None.*		
	Total.....		

John Doe, Petitioner.

(a) B. A. § 7*a* (8); B. R. No. V. (b) B. A. § 70*a* (3). (c) B. A. § 3*a* (4). (d) B. A. § 3*a* (2); compare § 60*b*. (e) B. A. § 60*d*.

SCHEDULE B. (5) (a)

A Particular Statement of the Property Claimed as Exempted (b) *from the Operation of the Acts of Congress Relating to Bankruptcy, giving each Item of Property and its Valuation: and if any Portion of it is Real Estate, its Location, Description, and Present Use.*

		Valuation.	
		$	c.
Military uniform, arms, and equipments.....	*None.*		
Property claimed to be exempted by State laws; (c) its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.....	*Two suits of wearing apparel, underwear, etc.*	25	00
	Section 690, Code of Civil Procedure of the State of California.		
	Total	25	00

John Doe, Petitioner.

(a) B. A. § 7*a* (8); B. R. No. V. (b) B. A. § 7*a* (8). (c) B. A. § 6.

SCHEDULE B. (6) (a)

Books, Papers, Deeds, and Writings Relating to Bankrupt's Business and Estate. (b)

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books.....	*All ledgers, journals, and day books pertaining to the partnership business of Blum & Potts, transacted at Oakland, Cal., are now in the possession of your petitioner, subject to the order of this court.*
Deeds.....	*The deeds to the real estate mentioned in the foregoing Schedule B are now in the possession of your petitioner, subject to the order of this court.*
Papers.....	*All promissory notes mentioned in the foregoing Schedule B, 2 (with the exception of those in the Oakland Bank, as hereinbefore mentioned), are now in the possession of your petitioner, subject to the order of this court.*

John Doe, Petitioner.

OATH OF SCHEDULE B.

UNITED STATES OF AMERICA, ——DISTRICT O —— } ss.

On this —— day of ——, A. D. 1——, before me personally came ——, the person mentioned in, and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

(Official character.)

(a) B. A. § 7*a* (8); B. R. No. V. (b) B. A. § 10*a* (1).

SUMMARY OF DEBTS AND ASSETS.

[From the statements of the bankrupt in Schedules A and B.]

			$	c.	$	c.
Schedule A	1 (1)	Taxes and debts due United States				
" "	1 (2)	Taxes due States, counties, districts, and municipalities				
" "	1 (3)	Wages	200	00		
" "	1 (4)	Other debts preferred by law				
Schedule A	2	Secured claims	3,500	00		
Schedule A	3	Unsecured claims	5,376	00		
Schedule A	4	Notes and bills which ought to be paid by other parties thereto	50	85		
Schedule A	5	Accommodation paper				
		Schedule A, total			9,436	85
Schedule B	1	Real estate	4,500	00		
Schedule B	2-*a*	Cash on hand				
" "	2-*b*	Bills, promissory notes, and securities	200	00		
" "	2-*c*	Stock in trade				
" "	2-*d*	Household goods, etc	25	00		
" "	2-*e*	Books, prints, and pictures				

SUMMARY OF DEBTS AND ASSETS—*(Continued)*.

Schedule B.....	2-*f*	Horses, cows, and other animals.....				
" "	2-*g*	Carriages and other vehicles.....				
" "	2-*h*	Farming stock and implements.....				
" "	2-*i*	Shipping and shares in vessels.....				
" "	2-*k*	Machinery, tools, etc.....				
" "	2-*l*	Patents, copyrights, and trademarks.....				
" "	2-*m*	Other personal property.....				
Schedule B.....	3-*a*	Debts due on open accounts.....	*57*	*23*		
" "	3-*b*	Stocks, negotiable bonds, etc.....	*500*	*00*		
" "	3-*c*	Policies of insurance.....				
" "	3-*d*	Unliquidated claims.....				
" "	3-*e*	Deposits of money in banks and elsewhere.....				
Schedule B.	4	Property in reversion, remainder, trust, etc.....				
Schedule B.	5	Property claimed to be excepted.....				
Schedule B.....	6	Books, deeds, and papers.....				
		Schedule B, total.....	.....	....	*5,582*	*23*

No. 207.

[Form No. 2.]

Partnership Petition. (a)

To the Honorable ————, Judge of the District (b) Court of the United States, for the ———— District of ————:

The petition of ———— respectfully represents:

That your petitioners and ———— have been partners under the firm name of ————, having their principal place of business at ————, in the county of ————, and district and State of ————, for the greater portion of the six months next immediately preceding the filing of this petition; (c) that the said partners owe debts which they are unable to pay in full; that your petitioners are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, (d) marked A, and verified by ———— oath, contains a full and true statement of all the debts of said partners, (e) and, as far as possible, the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, verified by ———— oath, contains an accurate inventory of all the property, real and personal, of said partners, and such further statements concerning said property as are required by the provisions of said acts.

And said ———— further states that the schedule hereto annexed, marked C, verified by his oath, contains a full and true statement of all his individual debts, (e) and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked D, verified by his oath contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ———— further states that the schedule hereto annexed, marked E, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked F, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ———— further states that the schedule hereto annexed, marked G, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked H, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ———— further states that the schedule hereto annexed, marked J, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts, and that the schedule hereto annexed, marked K, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore, your petitioners pray that the said firm may be adjudged by a decree of the Court to be bankrupts within the purview of said acts. (f)

————,
————,
————,
Petitioners.

————,
Attorney.

————, the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information and belief.

————,
————,
————,
Petitioners.

Subscribed and sworn to before me this —— day of ————, A. D. 18—.

————,
(Official character.)
————.

[Schedules to be annexed corresponding with schedules under Form No. 1.]

(a) B. A., secs. 5 and 59; B. R., Nos. VI and VIII.
(b) B. A., sec. 5 c.
(c) B. A., sec. 2 (1).
(d) B. A., sec. 7 a (8).
(e) Compare B. A., sec. 5 b, c, d, e, and f.
(f) B. R., Nos. VI, VII, VIII.

No. 208.

[Form No. 3.]

Creditors' Petition. (a)

To the Honorable ————, Judge of the District Court of the United States, for the ———— District of ————.

The petition of ————, of ————, and ————, of ————, and ————, of ————, respectfully shows:

That ————, of ————, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business [or resided, or had his domicile], (b) at ————, in the county of ————, and State and district aforesaid, and owes debts to the amount of $1,000. (c)

That your petitioners are creditors of said ————, having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of $500. (d) That the nature and amount of your petitioners' claims are as follows:

———— ———— ———— ————
———— ———— ———— ————

And your petitioners further represent that said ———— is insolvent, (e) and that within four months next preceding the date of this petition the said ———— committed an act of bankruptcy, (f) in that he did heretofore, to wit, on the —— day of
———— ———— ———— ————

Wherefore your petitioners pray that service of this petition, with a subpoena, (g) may be made upon ————, as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the Court to be a bankrupt within the purview of said acts.

————,
————,
————,
Petitioners.

————,
Attorney.

(a) B. A., sec. 59; compare secs. 3 and 4 b; B. R., Nos. VI and VII.
(b) B. R., sec. 2 (1).
(c) B. A., sec. 4 b.
(d) B. A., sec. 59 b.
(e) B. A., sec. 3 b.
(f) B. A., sec. 3 a.
(g) B. A., sec. 18 a; E. R., 7, 11-16.

United States of America, }
District of ————. } ss.

————, ————, ————, being three of the petitioners above named, do hereby make solemn

oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, ————, this ——day of ———, 18—.

————,

————,

(Official character.)

[Schedules to be annexed (h) corresponding with schedules under Form No. 1.]

(h) B. A., sec. 7 a (8); compare B. A., sec. 39 a (2) and (6); and B. R., No. IX.

No. 209.

[Form No. 4.]

Order to Show Cause upon Creditors' Petition.

In the District Court of the United States for the ———— District of ————.

In the matter of ————————————— } In Bankruptcy.

Upon consideration of the petition of ———— that ———— be declared a bankrupt, it is ordered, that the said ———— do appear at this Court, as a Court of bankruptcy, to be holden at ————, in the district aforesaid, on the —— day of ———, at —— o'clock in the ——noon, and show cause, if any there be, why the prayer of said petition should not be granted; and

It is further ordered that a copy of said petition, together with a writ of subpoena, (a) be served (b) on said ————, by delivering the same to him personally or by leaving the same at his last usual place of abode in said district, at least five days (c) before the day aforesaid.

Witness the Honorable ————, Judge of the said Court, and the seal thereof, at ————, in said district, on the —— day of ———, A. D. 18—.

[Seal of the Court]

————, (d)
Clerk.

(a) B. A., sec. 18 a.
(b) E. R., 13-16.
(c) B. R., No. XXXVII.
(d) B. R., No. III.

No. 210.

[Form No. 5.]

Subpoena to Alleged Bankrupt.

United States of America,
———— District of ————.

To ————, in said district, greeting:

For certain causes offered before the District Court of the United States of America within and for the ———— District of ————, as a Court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said Dis-

trict Court to be holden at ————, in said district, on the —— (a) day of ———, A. D. 189—, ———— to answer to a petition filed by ———— in our said Court, praying that you may be adjudged a bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in nowise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable —— ——, judge of said court, and the seal thereof, at ———, this —— day of ———, A. D. 189—.

[Seal of the Court] (b) —— ———,
Clerk.

(a) B. A., sec. 18 a.
(b) B. R., No. III.

No. 211.

[Form No. 6.]

Denial of Bankruptcy.

In the District Court of the United States, for the ———— District of ————.

In the Matter of ———————— } In Bankruptcy.

At ———, in said district, on the —— day of ——, A. D. 18—.

And now the said —— —— appears, and denies that he has committed the act of bankruptcy (a) set forth in said petition, or that he is insolvent,(b) and

avers that he should not be declared bankrupt for any cause in said petition alleged; and this he prays may be inquired of by the Court [or, he demands that the same may be inquired of by a jury].(c)

————.

Subscribed and sworn to before me this —— day of ————, A. D. 18—.

————.

(Official character.)

(a) B. A., sec. 3 a.
(b) B. A., sec. 3 b, c and d.
(c) B. A., sec. 19 a.

No. 212.

[Form No. 7.]

Order for Jury Trial.

In the District Court of the United States for the ———— District of ————.

In the Matter of ———————— } In Bankruptcy.

At ————, in said district, on the —— day of ——, 18—.

Upon the demand in writing (a) filed by ————, alleged to be a bankrupt, that the fact of the commission by him of an act of bankruptcy, and the fact of his insolvency may be inquired of by a jury, it is ordered, that said issue be submitted to a jury.

[Seal of the Court] (b) —— ——,

Clerk.

(a) B. A., sec. 19 a.
(b) B. R., No. III.

No. 213.

[Form No. 8.]

Special Warrant to Marshal.

In the District Court of the United States for the ———— District of ————.

In the Matter of ————————— } In Bankruptcy.

To the marshal of said district or to either of his deputies, Greeting:

Whereas a petition for adjudication of bankruptcy was, on the —— day of ————, A. D. 18—, filed against —— ——, of the county of ———— and State of ————, in said district, and said petition is still pending; (a) and whereas it satisfactorily appears that said ———— has committed an act of bankruptcy [or has neglected, or is neglecting, or is about to so neglect his property that it has thereby deteriorated, or is thereby deteriorating, or is about thereby to deteriorate in value (b)], you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said —— ——, and of all his deeds, books of account, and papers, and to hold and keep the same safely subject to the further order of the Court.

Witness the Honorable —— ——, judge of the said Court, and the seal thereof, at ————, in said district, on the —— of ————, A. D. 189—.

[Seal of the Court] (c) —— ——,(c)
Clerk.

Return by Marshal Thereon.

By virtue of the within warrant, I have taken possession of the estate of the within-named ——— ———, and of all his deeds, books of account, and papers which have come to my knowledge.

———,
Marshal [or Deputy Marshal].(d)

Fees and Expenses. (e)

1. Service of warrant	
2. Necessary travel, at the rate of six cents a mile each way.....	
3. Actual expenses (f) in custody of property and other services, as follows.....	
[Here state the particulars.]	

———,
Marshal [or Deputy Marshal].

District of ———, A. D. 18—.

Personally appeared before me the said ——— ———, and made oath that the above expenses returned by him have been actually incurred and paid by him, and are just and reasonable.

———,
Referee in Bankruptcy.

(a) B. A., sec. 2 (3) and (5).
(b) B. A., sec. 69; compare B. A., sec. 3 e.
(c) B. R., No. III.
(d) E. R., No. 15.
(e) B. A., sec. 52.
(f) B. R., Nos. X and XIX.

No. 214.

[Form No. 9.]

Bond of Petitioning Creditor. (a)

Know all men by these presents: That we, ——— ———, as principal, and ——— ———, as sureties are held and firmly bound into XY, in the full and just sum of ——— dollars, to be paid to the said XY (b), executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this —— day of ———, A. D. 189—.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the District Court of the United States for the ——— District of ——— against the said XY, and the said ——— has applied to that Court for a warrant to the marshal of said District directing him to seize and hold the property of said XY, subject to the further orders of said District Court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said ——— shall indemnify the said ——— for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained, then the above obligation to be void; otherwise to remain in full force and virtue.

———. [Seal]
———. [Seal]
———. [Seal]

Sealed and delivered
in presence of

———.

Approved this —— day of ———, A. D. 189—.

———,
District Judge.

(a) B. A. secs. 3 e and 69.

(b) The person against whom the involuntary petition has been filed.

No. 215.

[Form No. 10.]

Bond to Marshal. (a)

Know all men by these presents: That we, ————, as principal, and ————, as sureties, are held and firmly bound unto ————, marshal of the United States for the ———— District of ————, in the full and just sum of ———— dollars, to be paid to the said ————, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this —— day of ———, A. D. 189—.

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the District Court of the United States for the ———— District of ————, against the said ————, and the said Court has issued a warrant to the marshal of the United States for said District, directing him to seize and hold property of the said ————.

subject to the further order of the Court, and the said property has been seized by said marshal as directed, and the said District Court, upon a petition of said ———— has ordered the said property to be released to him.

Now, therefore, if the said property shall be released (a) according to the said ————, and the said ————, being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

————. [Seal]
————. [Seal]
————. [Seal]

Sealed and delivered
in presence of
————.

Approved this —— day of ———, A. D. 189—.
————,
District Judge.

(a) Compare B. A., sec. 69.

No. 216.

[Form No. 11.]

Adjudication that Debtor is not Bankrupt. (a)

In the District Court (b) of the United States for the ———— District of ————.

In Matter of ————
} In Bankruptcy.

At ————, in said District, on —— day of ———. A. D. 18——, before the Honorable ————. judge of the ———— District of ————.

This cause came on to be heard at ———— in said Court, upon the petition of ———— that ———— be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, and [here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had].

And thereupon, and upon consideration of the proofs in said cause [and the arguments of counsel (c) thereon, if any], it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said ———— was not a bankrupt, and that said petition be dismissed, with costs.(d)

Witness the Honorable ————, judge of said Court, and the seal thereof, at ———— in said District on the —— day of ———, A. D. 18——.

[Seal of the Court]

————,
Clerk.

(a) B. A. secs. 3 and 4; B. A. sec. 18d. e, f, g; compare B. A. sec. 59d.

(b) B. A. sec. 2 (1); B. A. sec. 32; compare B. R. Nos. VI and VII.

(c) B. R. No. IV.

(d) B. A. sec. 2 (18); B. R. No. XXXIV.

No. 217.

[Form No. 12.]

Adjudication of Bankruptcy. (a)

In the District (b) Court of the United States for the ——— District of ———

In the Matter of
———————
Bankrupt.
} In Bankruptcy.

At ———, in said District, on the —— day of ———, A. D. 18——, before the Honorable ———, judge of said Court in bankruptcy, the petition of ——— that ——— be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said ——— is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable ———, judge of said Court, and the seal thereof, at ———, in said District, on the —— day of ———, A. D. 18——.

[Seal of the Court]

———.
Clerk.

(a) B. A. secs. 3 and 4; B. A. sec. 18d, e, f, g; compare B. A. sec. 59d.

(b) B. A. sec. 2 (1); B. A. sec. 32; compare B. R. Nos. VI and VII. As to costs see B. R. No. XXXIV.

No. 218.

[Form No. 13.]

Appointment, Oath, and Report of Appraisers. (a)

In the District Court of the United States for the ———— District of ————.

In the matter of
————————————
Bankrupt. } In Bankruptcy.

It is ordered that ————, of ————, ———— of ————, and ———— of ————, three disinterested persons be, and they are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this Court, and report their appraisal to the Court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand this —— day of ————, A. D. 18——.

————,
Referee in Bankruptcy.

———— District of ————.—ss.

Personally appeared the within-named ———— and severally made oath(b) that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

————.
————.
————.

Subscribed and sworn to before me this —— day of ———, A. D. 189—.

———,
(Official character.)

(a) B. A. sec. 70b; B. R. No. XVII.
(b) B. A. sec. 20.

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

	Dollars.	Cts.

In witness whereof we hereunto set our hands, at ———, this —— day of ———, A. D. 18——.

———.
———.
———.

(a) B. A. sec. 70b; B. R. No. XVII.
(b) B. A. sec. 20.

No. 219.

[Form No. 14.]

Order of Reference. (a)

In the District Court of the United States for the ——— District of ———.

In the matter of
———————————
Bankrupt. } In Bankruptcy.

Whereas ———, of ———, in the county of ——— and District aforesaid, on the —— day of ———, A. D. 18—, was duly adjudged a bankrupt upon a petition filed in this Court by [or, against] him on the —— day of ———, A. D. 189—, according to the provisions of the acts of Congress relating to bankruptcy.

It is thereupon ordered that said matter be referred to ———, one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said acts; and that the said ——— shall attend before said referee on the —— day of ———, at ———, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said ——— bankruptcy(b).

Witness the Honorable ———, judge of the said Court, and the seal thereof, at ——— in said District, on the —— day of ———, A. D. 18—.

[Seal of the Court]

———,
Clerk.

(a) B. A. sec. 22a.
(b) B. R. No. XII.

No. 220.

[Form No. 15.]

Order of Reference in Judge's Absence. (a)

In the District Court of the United States for the ———— District of ————.

In the matter of ———————————— } In Bankruptcy.

Whereas on the —— day of ———, A. D. 18—, a petition was filed to have ————, of ————, in the county of ———— and District aforesaid, adjudged a bankrupt according to the provisions of the acts of Congress relating to bankruptcy; and whereas the judge of said Court was absent from said District at the time of filing said petition [(or, in case of involuntary bankruptcy,) on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors], it is thereupon ordered that the said matter be referred to ————, one of the referees in bankruptcy of this Court, to consider said petition and take such proceedings therein as are required by said acts; and that the said ———— shall attend before said referee on the —— day of ———, A. D. 189—, at ————.(b)

Witness my hand and the seal of the said Court at ————, in said District, on the —— day of ———, A. D. 189—.

[Seal of the Court]

————,
Clerk

(a) B. A. sec. 18f and g.
(b) B. R. No. XII.

No. 221.

[Form No. 16.]

Referee's Oath of Office. (a)

I, ————, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States. So help me God.

————.

Subscribed and sworn to before me this —— day of ————, A. D. 18——.

————,
District Judge.

(a) B. A. sec. 36.

No. 222.

[Form No. 17.]

Bond of Referee. (a)

Know all men by these presents, that we, ————, of ————, as principal, and ———— of ———— and ———— of ————, as sureties, are held and firmly bound to the United States of America in the sum of ———— dollars, lawful money of the United States, to be paid to the said United States,

for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Signed and sealed this —— day of ———, A. D. 189—.

The condition of this obligation is such that whereas the said ————, has been on the —— day of ———, A. D. 18—, appointed by the Honorable ————, judge of the District Court of the United States for the ———— District of ————, a referee in bankruptcy in and for the county of ————, in said district, under the acts of Congress relating to bankruptcy.

Now, therefore, if the said ———— shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed
in the presence of

———— [L. S.]
———— [L. S.]
———— [L. S.]

Approved this —— day of ———, A. D. 189—.

————,
District Judge.

(a) B. A. sec. 50.

No. 223.

[Form No. 18.]

Notice (a) of First Meeting of Creditors. (b)

In the District Court of the United States for the ——— District of ———.

In the Matter of
———————
Bankrupt. } In Bankruptcy.

To the creditors of ———, of ———, in the county of ———, and district aforesaid, a bankrupt.

Notice is hereby given that on the —— day of ———, A. D. 18—, the said ——— was duly adjudicated bankrupt; and that the first meeting of his creditors will be held at ——— in ———, on the —— day of ———, A. D. 18—, at —— o'clock in the —— noon, at which time the said creditors may attend, prove their claims,(c) appoint a trustee,(d) examine the bankrupt,(e) and transact such other business as may properly come before said meeting.

——— ——, 18—.

———,
Referee in Bankruptcy.

(a) B. A., sec. 58b; B. R. No. XXI (2).
(b) B. A., sec. 55a, b and c.
(c) B. A., secs. 55b, 57.
(d) B. A., secs. 44, 2 (17); B. R., No. XIII.
(e) B. A., sec. 7a (1) and (9).

No. 224.

[Form No. 19.]

List of Debts Proved at First Meeting. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————————
Bankrupt. } In Bankruptcy.

At ————, in said district, on the —— day of ———, A. D. 18—, before ————, referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

Names of Creditors	Residence.	Debts Proved.	
		Dolls.	Cts.

————,
Referee in Bankruptcy.

(a) Compare B. R. XXIV and B. A., sec. 42.

No. 225.

[Form No. 20.]

General Letter of Attorney in Fact (a) when Creditor is not Represented by Attorney at Law. (b)

In the District Court of the United States for ——— District of ———.

In the Matter of
———————
Bankrupt.
} In Bankruptcy.

To ———,

—— ———:

I, —— ———, of ———, in the county of ——— and State of ———, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice

of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my name and affixed my seal the —— day of ———, A. D. 189—.

—— ——— [L. S.]

Signed, sealed, and delivered in presence of

———.

Acknowledged before me this —— day of ———, A. D. 189—.

———,

[Official character.] (c)

(a) B. A., sec. 1 (9); B. R., No. XXI (5).
(b) B. A., sec. 1 (9); B. R., No. IV.
(c) B. A., sec. 20.

No. 226.

[Form No. 21.]

Special Letter of Attorney in Fact. (a)

In the Matter of
———————————
Bankrupt. } In Bankruptcy.

To —— ——,

—— ——:

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at ————, on the —— day of ———, before ———, or any adjournment thereof, and then and there ——— for ——— and in ——— name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt.

In witness whereof I have hereunto signed my name and affixed my seal the —— day of ———, A. D. 189—.

—— ——— [L. S.]

Signed, sealed, and delivered in presence of

————.

Acknowledged before me this —— day of ———, A. D. 18—.

————,
[Official character.](b)

(a) B. A., sec. 1 (9); B. R., No. XXI (5).
(b) B. A., sec. 20.

No. 227.

[Form No. 22.]

Appointment of Trustee by Creditors. (a)

In the District Court of the United States for the ——— District of ———.

In the Matter of
———————
Bankrupt. } In Bankruptcy.

At ———, in said district, on the —— day of ———, A. D. 18—, before —— ——, referee in bankruptcy.

This being the day appointed by the Court for the first meeting(b) of creditors in the above bankruptcy, and of which due notice has been given in the [here insert the names of the newspapers in which notice was published (c)], we, whose names are hereunder written, being the majority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting,(d) do hereby appoint ———, of ———, in the county of ———, and State of ———,(e) to be the trustee— of the said bankrupt's estate and effects.

Signatures of Creditors.	Residence of the Same.	Amount of Debt.	
		Dolls.	Cts.

Ordered that the above appointment of trustee— be, and the same is hereby approved. (f)

————,
Referee in Bankruptcy.

(a) B. A., secs. 2 (17), 44; B. R., Nos. XIII, XIV and XV.
(b) B. A., sec. 55.
(c) B. A., sec. 58 b.
(d) B. A., sec. 56.
(e) B. A., sec. 45.
(f) B. R., No. XIII; B. A., sec. 2 (17).

No. 228.

[Form No. 23.]

Appointment of Trustee by Referee. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————————————
Bankrupt. } In Bankruptcy.

At ————, in said district, on the —— day of ——, A. D. 18—, before ————, referee in bankruptcy.

This being the day appointed by the Court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the [here insert the name of the newspapers in which notice

was published], I, the undersigned referee of the said Court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present,(b) or duly represented, failed to make choice of a trustee of said bankrupt's estate, and therefore I do hereby appoint —— ——, of ————, in the county of ———— and State of ————, as trustee of the same.

————,
Referee in Bankruptcy.

(a) B. A. secs. 2 (17), 44.
(b) Compare B. R., No. XV.

No. 220.

[Form No. 24.]

Notice to Trustee of His Appointment. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
———————————— } In Bankruptcy.
Bankrupt. }

To ————, of ————, in the county of ————, and District aforesaid:

I hereby notify you that you were duly appointed trustee [or one of the trustees] of the estate of the

above-named bankrupt at the first meeting of the creditors, on the —— day of ———, A. D. 18——, and I have approved said appointment. The penal sum of your bond as such trustee has been fixed at ———— dollars (b). You are required to notify me forthwith of your acceptance or rejection of the trust. (c)

Dated at ————, the —— day of ———, A. D. 18——.

————,
Referee in Bankruptcy.

(a) B. R. No. XVI.
(b) Compare B. A. sec. 50b, c-m.
(c) See B. A., sec. 50k.

No. 230.

[Form No. 25.]

Bond of Trustee. (a)

Know all men by these presents, that we, ————, of ————, as principal, and ————, of ————, and ———— of ————, as sureties, are held and firmly bound unto the United States of America in the sum of ———— dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this —— day of ———, A. D. 189—.

The condition of this obligation is such that whereas the above-named ———— was, on the —— day

of ———, A. D. 189—, appointed trustee in the case pending in bankruptcy in said Court, wherein ——— is the bankrupt, and he, the said ————, has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said ————, trustee as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

————. [Seal]
————. [Seal]
————. [Seal]

Signed and sealed
in presence of
————.

(a) B. A. sec. 50b, c-m. As to the acknowledgment and justification of this bond, see B.A. sec. 50d, e, f, g.

No. 231.

[Form No. 26.]

Order Approving Trustee's Bond. (a)

At a Court of bankruptcy, held in and for the ———— District of ————, at ————, this —— day of ———, 189—.

Before ————, referee in bankruptcy, in the District Court of the United States for the ———— District of ————.

In the matter of
————————
Bankrupt. } In Bankruptcy.

It appearing to the Court ————, of ————, and in said District, has been duly appointed trustee of the estate of the above-named bankrupt, and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors [or by order of the Court], to wit, in the sum of ———— dollars, it is ordered that the said bond be, and the same is hereby, approved.

————,
Referee in Bankruptcy.

(a) B. A. sec. 50b, c, d, e, f, g.

No. 232.

[Form No. 27.]

Order that No Trustee be Appointed. (a)

In the District Court of the United States for the ———— District of ————.

In the matter of
————————
Bankrupt. } In Bankruptcy.

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trus-

tee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the Court, no trustee be appointed and no other meeting of the creditors be called.

————,
Referee in Bankruptcy.

(a) B. R. No. XV.

No. 233.

[Form No. 28.]

Order for Examination of Bankrupt. (a)

In the District Court of the United States for the ———— District of ————.

In the matter of
————————————
Bankrupt. } In Bankruptcy.

At ————, on the —— day of ————, A. D. 18——.

Upon the application of ————, trustee of said bankrupt [or creditor of said bankrupt], it is ordered that said bankrupt attend before ————, one of the referees in bankruptcy of this Court, at ————, on the —— day of ———, at —— o'clock in the ——noon, to submit to examination under the acts of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

————,
Referee in Bankruptcy.

(a) B. A. secs. 7a (1) and (9), 21a; compare 12a; B. R. No. XII (1).

No. 234.

[Form No. 29.]

Examination of Bankrupt or Witness. (a)

In the District Court of the United States for the ———— District of ————.

In the matter of
————————
Bankrupt. } In Bankruptcy.

At ————, in said District, on the —— day of ————, A. D. 18——, before ————, one of the referees in bankruptcy of said Court, ————, of ————, in the county of ———— and State of ————, being duly sworn and examined(b) at the time and place above mentioned, upon his oath says: [Here insert substance of examination of party].

————,
Referee in Bankruptcy.

(a) B. A. secs. 7a (1) and (9), 21a; B. R. No. XXII B. A. sec. 21.

(b) Compare B. A. sec. 41a (1) and (4).

No. 235.

[Form No. 30.]

Summons to Witness. (a)

To ————:

Whereas, ————, of ————, in the county of ————, and State of ————, has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the ———— District of ————.

These are to require you, to whom this summons is directed, personally to be and appear before ————, one of the referees in bankruptcy of the said Court, at ————, on the —— day of ———, at —— o'clock in the —— noon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable ————, judge of said Court, and the seal thereof at ————, this —— day of ———, A. D. 189—.

————,
Clerk.(b)

(a) B. A. sec. 21a; B. R. No. III.

(b) The summons should not only be signed by the clerk, but the seal of the Court should be affixed. See B. R. No. III.

Return of Summons to Witness.

In the District Court of the United States for the ———— District of ————.

In the matter of
————————
Bankrupt. } In Bankruptcy.

On this —— day of ———, A. D. 18——, before me came ————, of ————, in the county of

———— and State of ————, and makes oath, and says that he did, on ————, the —— day of ———, A. D. 189—, personally serve ————, of ————, in the county of ———— and State of ————, with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath and says that he is not interested in the proceeding in bankruptcy named in said summons.

————.

Subscribed and sworn to before me this ———— day of ————, A. D. 18——.

————(a)

(a) B. A. sec. 20.

No. 236.

[Form No. 31.]

Proof of Unsecured Debt. (a)

In the District Court of the United States, for the *Northern* District of *California*.

In the Matter of *JOHN DOE*, Bankrupt.	No. —— Proof of Unsecured Debt. Sec. 57. In Bankruptcy.

At *San Francisco*, in said *Northern* District of *California*, on the —— day of ————, A. D. 1——, came *Peter Simple*, of *the city and* county of *San Francisco*, *State of California*, in said *Northern* District of *California*, and made oath, and says that *John Doe*, the person

against whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of *twelve hundred* dollars; that the consideration of said debt is as follows: *goods, wares, and merchandise sold and delivered within two years last past by the said Peter Simple to the said John Doe, as is more fully set forth in the itemized bills hereunto annexed, and marked B and made a part hereof;* that no part of said debt has been paid (except *as is set forth in the statement hereunto annexed marked Exhibit A, and made a part hereof);* that there are no set-offs or counterclaims to the same (except_____

_____

_____);

and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever, *nor has any judgment been rendered thereon.* (b)

_____,
Creditor.

Subscribed and sworn to before me this ——day of ————, A. D. ——.

_____,
(Official character.)

(a) B. A. § 57*a*, *b*. *e*, etc.; B. R. No. XXI (1).

(b) B. A. § 20. If a claim is founded upon an instrument in writing, the original should be filed with the proof. B. A. § 57*b*. Depositions to prove debts existing in open accounts should contain an averment that no note has been received for such account, nor any judgment rendered thereon. Rule XXI (1).

No. 237.

[Form No. 32.]

Proof of Secured Debt. (a)

In the District Court of the United States, for the *Northern* District of *California*.

In the Matter of *JOHN DOE*, Bankrupt.	No. —— Proof of Secured Debt. Sec. 57. In Bankruptcy.

At *Oakland, in the county of Alameda, State of California*, in said *Northern* District of *California*, on the —— day of ————, A. D. 1——, came *Richard Sharp*, of *Halifax*, in the county of *Shasta*, in said *Northern* District of *California*, and made oath, and says that *John Doe*, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of *one hundred* dollars; that the consideration of said debt is as follows: *money loaned by this affiant to the said John Doe, on the 1st day of April, 18—;* that no part of said debt has been paid (except _____); that there are no set-offs or counterclaims to the same (except _____); and that the only securities held by this deponent for said debt are the following: *a promissory note dated the 1st day of April, 18—, a copy of which is hereto annexed, marked A, signed by the said John Doe jointly with Joseph Brooks.*

————,
Creditor.

Subscribed and sworn to before me this —— day of ————, A. D. 1——.

————.

————. (b)
(Official character.)

(a) B. A. § 57; B. F. No. XXI (1).
(b) B. A. § 20. See notes to Form No. 236.

No. 238.

[Form No. 33.]

Proof of Debt Due Corporation. (a)

In the District Court of the United States, for the *Northern* District of *California*.

In the Matter of *JOHN DOE*, Bankrupt. } No. —— Proof of Debt Due Corporation. Sec. 57. In Bankruptcy.

At *the city of Oakland*, in said *Northern* District of *California*, on the —— day of ————, A. D. 1——, came *Amos Jones*, of *San Jose*, in the county of *Santa Clara*, and State of *California*, and made oath and says that he is (b) *Treasurer* of the *Blue Mass Company*, a corporation incorporated by and under the laws of the State of *California*, and carrying on business at *San Jose*, in the county of *Santa Clara*, and State of *California*, and that he is duly authorized to make this proof, and says that the said *John Doe*, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of *five hundred and fifty* dollars; that

the consideration of said debt is as follows: *goods, wares, and merchandise sold and delivered within two years last past by the said corporation to the said John Doe, as is more fully set forth in the itemized bills hereto annexed and marked Exhibit B, and made a part hereof;* that no part of said debt has been paid (except *as is set forth in the statement hereto annexed, marked Exhibit A, and made a part hereof);* that there are no off-sets or counterclaims to the same (except_____
_____);
and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever, *nor has any judgment been rendered thereon.*

Amos Jones,
Treasurer of said corporation.

Subscribed and sworn to before me this
—— day of ———, A. D. 1——.

———,
———. (c)
(Official character.)

(a) B. A. § 57; B. R. No. XXI (1).
(b) B. R. XXI.
(c) B. A. § 20. See notes to Form No. 236.

No. 239.

[Form No. 34.]

Proof of Debt by Partnership. (a)

In the District Court of the United States, for the *Northern* District of *California.*

In the Matter of *JOHN DOE,* Bankrupt.	No. —— Proof of Debt by Partnership. Sec. 57. In Bankruptcy.

At *the city and county of San Francisco*, in said *Northern* District of *California*, on the —— day of ————, A. D. 1——, came *William S. Topham*, of *the city and* county of *San Francisco*, in said *Northern* District of *California*, and made oath and said that he is one of the firm of *W. Topham & Co.*, consisting of himself and *M. Burt and F. Topham*, of *said city and* county of *San Francisco*, and State of *California;* that the said *John Doe*, the person against whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of *three hundred and thirty* dollars; that the consideration of said debt is as follows: *goods, wares, and merchandise sold and delivered within two years last past by said firm to said John Doe, as is more particularly set forth in the itemized bills hereto annexed, marked Exhibit B, and made a part hereof;* that no part of said debt has been paid (except *as is set forth in the statement hereto annexed, marked Exhibit A, and made a part hereof);* that there are no set-offs or counterclaims to the same (except _____); and this deponent has not, nor has his said firm, nor

has any person by their order, or to this deponent's knowledge or belief, for their use, had or received any manner of security for said debt whatever; *nor has any judgment been rendered thereon.*

————————.
Creditor.

Subscribed and sworn to before me this —— day of ————, A. D. 1——.

————————,
————————.
(Official character.) (b)

(a) B. A. § 57; B. R. No. XXI (1).
(b) B. A. § 20. See notes to Form No. 236.

No. 240.

[Form No. 35.]

Proof of Debt by Agent or Attorney. (a)

In the District Court of the United States, for the *Northern* District of *California.*

In the Matter of *JOHN DOE,* Bankrupt. } No. —— Proof of Debt by Agent or Attorney. Sec. 57. In Bankruptcy.

At *Oakland, county of Alameda,* in said *Northern* District of *California,* on the —— day of ————, A. D. 1——, came *Joseph H. Reed,* of *Oakland,* in the county of *Alameda,* and State of *California, authorized agent* of

William South, of Ukiah, in the county of *Mendocino,* State of *California,* and made oath and says that *John Doe,* the person against whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to the said *William South,* in the sum of *twenty-five* dollars; that the consideration of said debt is as follows: *goods, wares, and merchandise sold and delivered within two years last past by the said William South to the said John Doe, as is more fully set forth in the itemized bills hereunto annexed, and marked B, and made a part hereof;* that no part of said debt has been paid (except, *see Form No. 31);* and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, had or received any manner of security for said debt whatever, *nor has any judgment been rendered thereon.* And this deponent further says, that this deposition cannot be made by the claimant in person because *said William South is absent from said city of Ukiah and the State of California,* and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied except as above set forth.

_____.

Subscribed and sworn to before me this) __ day of _____, A. D. 1____)

_____,

_____,

(Official character.) (b)

(a) B. A. § 57; B. R. No. XXI (1) and (5).

(b) B. A. § 20. See notes to Form No. 236.

No. 241.

[Form No. 36.]

Proof of Secured Debt by Agent. (a)

In the District Court of the United States, for the *Northern* District of *California.*

In the Matter of *JOHN DOE,* Bankrupt.	No. —— Proof of Secured Debt by Agent. Sec. 57. In Bankruptcy.

At *Oakland, in the county of Alameda, State of California,* in said *Northern* District of *California,* on the —— day of ————, A. D. 1——, came *Joseph H. Reed,* of *Oakland,* in the county of *Alameda,* and State of *California,* (b) *authorized agent* of *William South, of Ukiah.* in the county of *Mendocino,* and State of *California,* and made oath, and says that *John Doe,* the person against whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to the said *William South,* in the sum of *one hundred* dollars; that the consideration of said debt is as follows: *money loaned by said William South, to said John Doe, on the 1st day of April, 18—;* that no part of said debt has been paid (except _____); that there are no set-offs or counterclaims to the same (except _____); and that the only securities held by said *William South* for said debt are the following: *a promissory note, a copy of which is hereto annexed, dated April 1st, 18—, signed by the said John Doe jointly with Richard Malins;* and this deponent further says that this deposition cannot be made by the claimant in person because *said William*

South is absent from said city of Ukiah and the State of California; and that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

————.

Subscribed and sworn to before me this —— day of ———, A. D. 1——.

————,
————.
(Official character.)

(a) B. A. § 57; B. R. No. XXI (1) and (5). See notes to Form No. 236.

(b) "Attorney" or "authorized agent," as may be.

No. 242.

[Form No. 37.]

Affidavit of Lost Bill or Note. (a)

In the District Court of the United States, for the ———— District of ————.

In the Matter of
————————
Bankrupt. } In Bankruptcy.

On this —— day of ———, A. D. 18—, at ————, came ————, of ————, in the county of ————, and State of ————, and makes oath and says that the bill of exchange [or note], the par-

ticulars whereof are underwritten, has been lost under the following circumstances, to wit, ————————

————————————————————————————————————

————————————————————————————————————

and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said ————————, or any person or persons to their use, to this deponent's knowledge or belief negotiated the said bill [or note], nor in any manner parted with or assigned the legal or beneficial interest therein, or any part thereof; and th he, this deponent, is the person now legally and beneficially interested in the same.

Bill or note above referred to.

Date.	Drawer or Maker.	Acceptor.	Sum.

————————.

Subscribed and sworn to before me this —— day of ————, A. D. 18——.

————————, (b)
[Official character.]

(a) B. A. sec. 57 b.
(b) B. A. sec. 20. See notes to Form 31.

No. 243.

[Form No. 38.]

Order Reducing Claim. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————————
Bankrupt. } In Bankruptcy.

At ————, in said district, on the —— day of ———, A. D. 18——.

Upon the evidence submitted to this Court upon the claim of ———— against said estate [and, (if the fact be so) upon hearing counsel thereon], it is ordered, that the amount of said claim be reduced from the sum of ———, as set forth in the affidavit in proof of claim filed by said creditor in said case, to the sum of $———, and that the latter-named sum be entered upon the books of the trustee as the true sum upon which a dividend shall be computed [(if with interest,) with interest thereon from the —— day of ———, A. D. 18——].

————,
Referee in Bankruptcy.

(a) B. A. secs. 2 (2); 57 d, f, k and l; B. R. No. XXI, (6).

No. 244.

[Form No. 39.]

Order Expunging Claim. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————————
Bankrupt. } In Bankruptcy.

At ————, in said district, on the —— day of ———, A. D. 18——.

Upon the evidence submitted to the Court upon the claim of ———— against said estate [and, (if the fact be so,) upon hearing counsel hereon], it is ordered that said claim be disallowed and expunged from the list of claims upon the trustee's record in said case.

————,
Referee in Bankruptcy.

(a) B. A. secs. 2 (2); 57 d, f, k, and l; B. R. No. 21, (6).

No. 245.

[Form No. 40.]

List of Claims and Dividends to be Recorded by Referee and by him Delivered to Trustee.

In the District Court of the United States for the ———— District of ————.

In the Matter of ————————, Bankrupt. } In Bankruptcy.

At ————, in said district, on the —— day of ———, A. D. 18——.

A list of debts proved and claimed under the bankruptcy of ————, with ———— dividend, at the rate of ———— per cent this day declared thereon by ————, a referee in bankruptcy. (a)

No.	Creditors. [To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.]	Sum Proved.		Dividend.	
		Dolls.	Cts.	Dolls.	Cts.

————,
Referee in Bankruptcy.

(a) B. A. sec. 39 a (1); compare sec. 65.

No. 246.

[Form No. 41.]

Notice (a) of Dividend. (b)

In the District Court of the United States for the ———— District of ————.

In the Matter of ————————, Bankrupt. } In Bankruptcy.

At ————, on the —— day of ———, A. D. 18—.

To ————,

Creditor of ————, bankrupt:

I hereby inform you that you may, on application at my office, ————, on the —— day of ———, or on any day thereafter, between the hours of ——, receive a warrant for the ——— dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filling up and signing the subjoined letter.

————,
Trustee.

Creditor's Letter to Trustee.

To ————,

Trustee in bankruptcy of the estate of ———, bankrupt:

Please deliver to ———— the warrant for dividend payable out of the said estate to me.

————,
Creditor.

(a) B. A. sec. 58 a (5).
(b) B. A. secs. 39 a (1), 47 (9); 65.

No. 247.

[Form No. 42.]

Petition and Order for Sale by Auction of Real Estate. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————
Bankrupt. } In Bankruptcy.

Respectfully represents ————, trustee of the estate of said bankrupt, that it would be for the benefit of said estate that a certain portion of the real estate of said bankrupt, to wit: [here describe it and its estimated value] should be sold by auction, in lots or parcels, and upon terms and conditions, as follows: ———— ———— ————
———— ———— ———— ———— ————

Wherefore he prays that he may be authorized to make sale by auction of said real estate as aforesaid.

Dated this —— day of ————, A. D. 18——.

————,
Trustee.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or after hearing ———— in favor of said petition and ———— in opposition thereto], it is ordered that

the said trustee be authorized to sell the portion of the bankrupt's real estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this —— day of ———, A. D. 189—.

———,
Referee in Bankruptcy.

(a) B. R. No. XVIII; compare B. A. secs. 70 b, 58 a (4).

No. 248.

[Form No. 43.]

Petition and Order for Redemption of Property from Lien. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————,
Bankrupt. } In Bankruptcy.

Respectfully represents ————, trustee (b) of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [here describe the estate or property and its estimated value] is sub-

ject to a mortgage [describe the mortgage], or to a conditional contract [describing it], or to a lien [describe the origin and nature of the lien,] [or (if the property be personal property,) has been pledged or deposited and is subject to a lien] for [describe the nature of the lien], and that it would be for the benefit of the estate that said property should be redeemed and discharged from the lien thereon. Wherefore, he prays that he may be empowered to pay out of the assets of said estate in his hands the sum of ————, being the amount of said lien, in order to redeem said property therefrom.

Dated this —— day of ———, A. D. 18——.

————,
Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail (c) to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or, after hearing ———— in opposition thereto], it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of $——, being the amount of the lien, in order to redeem the property therefrom.

Witness my hand this —— day of ———, A. D. 189—.

————,
Referee in Bankruptcy.

(a) B. R. No. XXVIII.

(b) This petition may be made by the trustee or by a creditor or the bankrupt.

(c) Not required either by the statute or the rules.

No. 249.

[Form No. 44.]

Petition and Order for Sale (a) Subject to Lien.

In the District Court of the United States for the ———— District of ————.

In the Matter of
————,
Bankrupt. } In Bankruptcy.

Respectfully represents ————, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate to wit: [here describe the estate or property and its estimated value] is subject to a mortgage [describe mortgage], or to a conditional contract [describe it], or to a lien [describe the origin and nature of the lien], or [if the property be personal property] has been pledged or deposited and is subject to a lien for [describe the nature of the lien], and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore, he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this —— day of ————, A. D. 189—.

————,
Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice (b) was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or af-

ter hearing ———— in favor of said petition and ———— in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction [or, at private sale], keeping an accurate account of the property sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this —— day of ———, A. D. 189—.

————,
Referee in Bankruptcy.

(a) B. R. No. XVIII, compare B. R. No. XXVIII.
(b) See B. R. No. XVIII; compare B. A., sec. 70 b; B. A. sec. 58 a (4).

No. 250.

[Form No. 45.]

Petition and Order for Private Sale. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————————
Bankrupt. } In Bankruptcy.

Respectfully represents ————, duly appointed trustee of the estate of the aforesaid bankrupt.

That for the following reasons, to wit, ————

it is desirable and for the best interest of the estate to sell at private sale a certain portion of the said estate, to wit: ——

Wherefore, he prays that he may be authorized to sell the said property at private sale.

Dated this —— day of ———, A. D. 189—.

———,
Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given (b) by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or after hearing ——— in favor of said petition and ——— in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this ——day of ———, A. D. 189—.

———,
Referee in Bankruptcy.

(a) B. R. XVIII (2).

(b) See B. R. No. XVIII; compare B. A. sec. 70 b; B. A., sec. 58 a (4).

No. 251.

[Form No. 46.]

Petition and Order for Sale of Perishable Property. (b)

In the District Court of the United States for the ———— District of ————

In the Matter of ————————, Bankrupt. } In Bankruptcy.

Respectfully represents ———— the said bankrupt [or, a creditor, or the receiver, or the trustee of the said bankrupt's estate].

That a part of the said estate, to wit, ——

now in ———, is perishable, and that there will be loss if the same is not sold immediately.

Wherefore, he prays the Court to order that the same be sold immediately as aforesaid.

Dated this —— day of ———, A. D. 189—.

————.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice (b) was given by mail to the creditors of the said bankrupt [or, without notice to the creditors], now, after due hearing, no adverse interest being represented thereat [or, after hearing ———— in favor of said petition and ———— in opposition thereto] I find that the facts are as above stated, and that the same is required in the interest of the estate, and it is therefore ordered

that the same be sold forthwith and the proceeds thereof deposited in Court.

Witness my hand this ——day of ———, A. D. 189—.

———.

Referee in Bankruptcy.

(a) B. R. No. XVIII (3).

(b) Compare B. A. secs. 70 b and 58 a (4).

No. 252.

[Form No. 47.]

Trustee's Report of Exempted Property. (a)

In the District Court of the United States for the ——— District of ———

In the Matter of ———— Bankrupt. } In Bankruptcy.

At ———, on the —— day of ———, 18——.

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the acts of Congress relating to bankruptcy.

General Head.	Particular Description.	Value.	
		Dolls.	Cts.
Military uniforms, arms, and equipments.....			
Property exempted by State laws. (b).....			

———.

Trustee.

(a) B. R. No. XVII; B. A. sec. 47 (11); compare B. A. secs. 7 a (8); 2 (11); 70 b; and Form No. 13.
(b) B. A., sec. 6.

No. 253.

[Form No. 48.]

Trustee's Return of No Assets. (a)

In the District Court of the United States for the ———— District of ————

In the Matter of
————————
Bankrupt. } In Bankruptcy.

At ————, in said district, on the —— day of ———, A. D. 18——.

On the day aforesaid, before me comes ————, of ————, in the county of ———— and State of ————, and makes oath and says that he, as trustee of the estate and effects of the above-named bankrupt, neither received nor paid any moneys on account of the estate.

Subscribed and sworn to before me at ————, this —— day of ———, A. D. 18——.

————.
Referee in Bankruptcy

(a) B. A., sec. 70 b; B. R. No. XVII; B. A. sec. 47 a (10). Compare B. R. No. XV.

No. 254.

[Form No. 49.]

Account of Trustee. (a)

DR. The estate of ————, bankrupt, in account with ————, trustee. CR.

		Dolls.	Cts.	Dolls.	Cts.			Dolls.	Cts.	Dolls.	Cts

(a) B. A. § 47*a* (1), (6), (7), and (8); B. A. §§ 49 and 29*c* (3). See note to Form No. 51.

No. 255.

[Form No. 50.]

Oath to Final Account of Trustee. (a)

In the District Court of the United States for the ———— District of ————

In the Matter of ————————, Bankrupt. } In Bankruptcy.

On this —— day of ———, A. D. 18——, before me comes ————, of ————, in the county of ———— and State of ————, and makes oath, and says that he was, on the —— day of ———, A. D. 18——, appointed trustee of the estate and effects of the above-named bankrupt, and that as such trustee he has conducted the settlement of the said estate. That the account hereto annexed containing —— sheets of paper, the first sheet whereof is marked with the letter —— [reference may here also be made to any prior account filed by said trustee] is true, and such account contains entries of every sum of money received by said trustee on account of the estate and effects of the above-named bankrupt, and that the payments purporting in such account to have been made by said trustee have been so made by him. And he asks to be allowed for said payments and for commission and expenses as charged in said accounts. (b)

————,
Trustee.

Subscribed and sworn to before me at ————, in said ———— district of ————, this —— day of ———, A. D. 18——.

————, (c)
[Official character.]

(a) B. A. 47 a (1), (6), (7) and (8), 49.
(b) B. A. secs. 62, 64 b (1).
(c) B. A. sec. 20. See note to Form No. 51.

No. 256.

[Form No. 51.]

Order Allowing Account (a) and Discharging Trustee.

In the District Court of the United States for the ———— District of ————

In the Matter of
————————
Bankrupt. } In Bankruptcy.

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered, that the same be allowed, and that the said trustee be discharged of his trust.

————,
Referee in Bankruptcy. (b)

(a) B. A. sec. 47 a (1), (6), (7) and (8).
(b) B. R. No. XVII, last sentence. As to notice of filing of trustees' accounts and the date and place of examination of the same, see B. A. sec. 58 a (6).

No. 257.

[Form No. 52.]

Petition for Removal of Trustee. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of ————————, Bankrupt. } In Bankruptcy.

To the Honorable ————, Judge (b) of the District Court for the ———— District of ————:

The petition of ————, one of the creditors of said bankrupt, respectfully represents that it is for the interest of the estate of said bankrupt that ——, heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following to wit: [Here set forth the particular cause or causes for which such removal is requested.]

Wherefore, ———— pray that notice may be served upon said ————, trustee as aforesaid, to show cause, at such time as may be fixed by the Court, why an order should not be made removing him from said trust.

————.

(a) B. A. sec. 2 (17); compare B. R. No. XVII.
(b) B. R. No. XVII.

No. 258.

[Form No. 53.]

Notice of Petition for Removal of Trustee. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of ————————— Bankrupt. } In Bankruptcy.

At ————, on the —— day of ———, A. D. 18——.

To ————, Trustee of the estate of ————, bankrupt:

You are hereby notified to appear before this Court, at ——, on the —— day of ———, A. D. 18——, at — o'clock — m., to show cause (if any you have) why you should not be removed from your trust as trustee as aforesaid, according to the prayer of the petition of ————, one of the creditors of said bankrupt, filed in this Court on the —— day of ———, A. D. 18——, in which it is alleged [here insert the allegation of the petition].

————,
Clerk. (b)

(a) B. R. No. XVII; compare B. A. sec. 2 (17).
(b) B. R. No XIII, last clause.

No. 259.

[Form No. 54.]

Order for Removal of Trustee. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of ————————, Bankrupt. } In Bankruptcy.

Whereas, ————, of ————, did, on the —— day of ———, A. D. 18——, present his petition to this Court, praying that for the reasons therein set forth, ————, the trustee of the estate of said ————, bankrupt, might be removed:

Now, therefore, upon reading the said petition of the said ———— and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee,

It is ordered that the said ———— be removed from the trust as trustee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said ————, trustee [or, out of the estate of the said ————, subject to prior charges]. (b)

Witness, the Honorable ————, judge of the said Court, and the seal thereof, at ————, in said district, on the —— day of ———, A. D. 18——.

————,
Clerk. (c)

[Seal of the Court.]

(a) B. A. sec. 2 (17); compare B. R. No. XVII.
(b) B. A. sec. 2 (18).
(c) B. R. No. XIII, last clause.

No. 260.

[Form No. 55.]

Order for Choice of New Trustee. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————————————
Bankrupt. } In Bankruptcy.

At ————, on the —— day of ——— A. D. 18——.

Whereas, by reason of the removal [or, the death or, resignation] of ————, heretofore appointed trustee of the estate of said bankrupt, a vacancy exists in the office of said trustee,

It is ordered, that a meeting of the creditors of said bankrupt be held at ————, in ————, in said district, on the —— day of ———, A. D. 18——, for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day. (b)

————,
Referee in Bankruptcy. (c)

(a) B. A. secs. 44 and 46.
(b) B. A. sec. 58 a (3).
(c) B. A. sec. 58 c.

No. 261.

[Form No. 56.]

Certificate by Referee to Judge. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of
————————
Bankrupt. } In Bankruptcy.

I, ————, one of the referees of said Court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings: [Here state the question, a summary of the evidence relating thereto, and the finding and order of the referee thereon.]

And the said question is certified to the judge for his opinion thereon.

Dated at ————, the —— day of ————, A. D. 18——.

————,
Referee in Bankruptcy.

(a) Compare B. R. No. XXVII; B. A. sec. 39 a (5). (*) It is to be noted that under the present practice, when an issue arises before a referee he has power to determine the question, though his determination is subject to a review by the Court. The certificate outlined in the above form is the means used for bringing the question up for review. Under the old bankruptcy law the register had no power to determine an issue, if one arose, but it was his duty to certify the facts and the question to the Court, though in practice he also stated his opinion and what order he considered should be made.

(*) From Collier's Forms in Bankruptcy.

No. 262.

[Form No. 57.]

Bankrupt's Petition for Discharge. (a)

In the Matter of
———————————
Bankrupt.
} In Bankruptcy.

To the Honorable ————, Judge (b) of the District Court of the United States for the District of ————.

————, of ———— in the county of ———— and State of ————, in said district, respectfully represents that on the —— day of ———, (c) last past, he was duly adjudged bankrupt under the acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and of the orders of the Court touching his bankruptcy.

Wherefore, he prays that he may be decreed by the Court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge. (d)

Dated this —— day of ———, A. D. 189——.

————,
Bankrupt.

(a) B. A. sec. 14 a; B. R. No. XXXI.
(b) B. A. sec. 14 b; compare B. A. sec. 38 a (4).
(c) B. A. sec. 14 a.
(d) B. A. sec. 17.

Order of Notice Thereon. (a)

District of ————.—ss:

On this —— day of ———, A. D. 189—, on reading the foregoing petition, it is —

Ordered by the Court that a hearing be had upon the same on the —— day of ———, A. D. 189—, before said Court, at ————, in said district, at — o'clock in the ——noon; and that notice thereof be published in (b) "————," a newspaper printed in said district, and that all known creditors and other persons in interest (c) may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the Court that the clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

Witness, the Honorable ————, Judge of the said Court, and the seal thereof, at ————, in said district, on the —— day of ———, A. D. 189—.

————,
Clerk.

[Seal of the Court.]

—— hereby depose, on oath that the foregoing order was published in the ———— on the following —— days, viz:

On the —— day of ——— and on the —— day of ———, in the year 189—.

————.

District of ————.

————, 189—.

Personally appeared ———— and made oath that the foregoing statement by him subscribed is true.

Before me,

————, (d)
[Official character.]

I hereby certify that I have on this —— day of ———, A. D. 189—, sent by mail copies of the above order, as therein directed.

————,
Clerk.

(a) B. A. sec. 14, 58 a (2).
(b) B. A. sec. 58 b; compare B. A. sec. 28.
(c) B. A. sec. 14 b.
(d) B. A. sec. 20.

No. 263.

[Form No. 58.]

Specification of Grounds of Opposition to Bankrupt's Discharge. (a)

In the District Court of the United States for the ———— District of ————.

In the matter of
————————
Bankrupt. } In Bankruptcy.

————, of ————, in the county of ———— and State of ————, a party interested in the estate of said ————, bankrupt, do hereby oppose

the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specification: [Here specify the grounds of opposition.]

————,
Creditor.

(a) B. R. No. XXXII: B. A. sec. 14 b.

No. 254.

[Form No. 59.]

Discharge of Bankrupt. (a)

District Court of the United States, ———— District of ————.

Whereas, ———— of ———— in said district, has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this Court that said ———— be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the —— day of ————, A. D. 189—, on which day the petition for adjudication was filed ———— him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy. (b)

Witness, the Honorable ————, Judge of said District Court, and the seal thereof, this —— day of ————, A. D. 189—.

————.
Clerk.

[Seal of the Court.]

(a) B. A. sec. 14 b.

(b) B. A. sec. 17.

No. 265.

[Form No. 60.]

Petition for Meeting to Consider Composition. (a)

District Court of the United States for the ———— District of ————.

———————— } In Bankruptcy.
Bankrupt. }

To the Honorable ————, Judge of the District Court of the United States for the ———— District of ————.

The above-named bankrupt ———— respectfully represent—that a composition of —— per cent upon all unsecured debts, not entitled to a priority ———— in satisfaction of —— debts has been proposed by ——— to ———, creditors, as provided by the acts of Congress relating to Bankruptcy, and —— verily believe that the said composition will be accepted by a majority in number and in value of ———— creditors whose claims are allowed.

Wherefore, — he — pray — that a meeting of —— creditors may be duly called upon to act upon said proposal for a composition, according to the provisions of said acts and the rules of Court.

————,
Bankrupt.

(a) Compare B. A. sec. 12 a and b.

No. 266.

[Form No. 61.]

Application for Confirmation of Composition. (a)

In the District Court of the United States for the ———— District of ————.

In the Matter of ————————, Bankrupt. } In Bankruptcy.

To the Honorable ————, Judge of the District Court of the United States for the ———— District of ————.

At ————, in said district, on the —— day of ——, A. D. 189—, now comes ————, the above-named bankrupt, and respectfully represents to the Court that, after he had been examined in open Court [or, at a meeting of his creditors] and had filed in Court a schedule of his property and a list of his creditors, as required by law, he offered terms of composition to his creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of —— dollars, has been deposited, subject to the order of the judge, in the ———— National Bank, of ————, a designated depository of money in bankruptcy cases.

Wherefore, the said ———— respectfully asks that the said composition may be confirmed by the Court.

————.
Bankrupt.

(a) B. A. sec. 12 a and b. As to notice, compare B. A., sec. 58 a (2); as to opposition, compare B. A., sec. 12 b, c, d; and B. R. No. XXXII.

No. 267.

[Form No. 62.]

Order Confirming Composition. (a)

In the District Court of the United States for the ———— District of ————.

In the matter of
———————— } In Bankruptcy.

An application for the confirmation of the composition offered by the bankrupt having been filed in Court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited having been deposited as ordered, in such place as was designated by the judge of said Court, and subject to his order; and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been

guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises or acts contrary to the acts of Congress relating to bankruptcy: It is, therefore, hereby ordered that the said composition be, and it hereby is, confirmed.

Witness, the Honorable ————, Judge of said Court, and the seal thereof, this —— day of ———, A. D. 189—.

————,
Clerk.

[Seal of the Court]

(a) B. A. sec. 12 b and d.

No. 268.

[Form No. 63.]

Order of Distribution on Composition. (a)

United States of America:

In the District Court of the United States for the ———— District of ————.

In the matter of
————————
Bankrupt. } In Bankruptcy.

The composition offered by the above-named bankrupt in this case having been duly confirmed by the judge of said Court, it is hereby ordered and de-

creed that the distribution of the deposit shall be made by the clerk of the Court as follows, to wit: 1st, to pay the several claims which have priority; 2d, to pay the costs of proceedings; 3d, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed, and appear upon a list of allowed claims, on the files in this case, which list is made a part of this order.

Witness, the Honorable ————, Judge of said Court, and the seal thereof, this —— day of ———, A. D. 189—.

————.
Clerk.

[Seal of the Court.]

(a) B. A. sec. 12 e.

CHAPTER IV.

EQUITY.

Section I.

Subsection 1.

No. 269.

General Frame of Bill in Equity.

1. The direction or address.
2. The introduction.
3. The stating part.
3 a. The charging part.
4. The jurisdiction clause.
5. The interrogating part.
6. The prayer for relief.
7. The prayer for process.

Notes.—Sec. 3. The charging part of a bill is now usually incorporated with the stating part. See Equity Rule, 21; Desty's Fed. Proc.; Foster's Fed. Proc., sec. 79.

Sec. 4.—It is not now necessary to insert this clause, but it is still common usage to insert a short clause of this character. See Equity Rule, 21; Foster's Fed. Proc., sec. 81; Loveland's Forms of Fed. Proc., p. 48.

Sec. 5.—The interrogating part is now only inserted when the plaintiff desires specific answers to be made by the defendant to obtain a discovery. See Equity Rule, 40, as amended in 1850; Desty's Fed. Proc.; Foster's Fed. Proc., sec. 82.

No. 270.

The Title.

District (or Circuit) Court of the United States in and for the ———— District of ————.

In Equity.

AB, Plaintiff, vs. XY, Defendant. } No. ——.

No. 271.

The Direction.

To the Honorable, the Judges of the ———— Court of the United States for the ———— District of ————.

No. 272.

The Introduction.

AB, of ————, and a citizen of the State of ————, brings this his bill against XY, of ————, a citizen of the State of ————.

(For variations in the form of introduction, see Forms, Nos. 280 to 293, post.)

No. 273.

The Stating Part.

And thereupon your orator complains and says:

First. That ————.

Note.—The cause of action to be set forth in a clear and distinct narrative, with the facts relied upon as the basis of suit. For convenience, each paragraph should be numbered so that the successive allegations may be readily referred to.

No. 274.

The Charging Part.

And your orator further says that:

Note.—State and avoid, by counter-averments if desired, any matter or thing which it is supposed will be insisted on by the defendant by way of defense or excuse to the case made by the prayer for relief.

No. 275.

The Jurisdiction Clause. (a)

In consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict rule of the common law, and is only relievable in a Court of equity, where matters of this kind are properly cognizable and reviewable, etc.

(a) See Desty's Fed. Proc., sec. 2.

No. 276.

The Interrogating Part. (a)

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may upon his corporate oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, and perfect answer make to each of the several interrogatories hereinafter numbered and set forth as by the note hereunder written he is required to answer.

First. Whether, etc.

Second. Whether, etc.

(a) Eq. R. 43; Desty's Fed. Proc.

No. 277.

Prayer for Relief.

(Introduction Prayer for Relief.)

To the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, and that the said defendant may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, he now prays the Court: [State the relief sought—See Forms Nos. 294 to 326.]

No. 278.

Prayer for General Relief.

And that your orator may have such further or other relief in the premises as the nature of the circumstances of the case may require.

No. 279.

Prayer for Process.

May it please your Honors to grant to your orator a writ of subpoena, to be directed to the said ——— ———, thereby commanding him at a certain time, and under a certain penalty therein to be limited, personally to appear before this honorable Court and then and there full, true, direct, and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction, and decree as may be made against him in the premises, as shall seem meet and agreeable to equity.

And your orator will ever pray.

Variations in the Introduction. (a)

See, as to parties, Eq. R. 47 to 51; Desty's Fed. Proc., secs. 436, 24.

No. 280.

One Plaintiff and Two or More Defendants.

A B, of ————, brings this, his bill, against V W, of ————, a citizen of the state of ——— ———, and X Y, of ————, a citizen of the state of ————.

No. 281.

Two or More Plaintiffs against One Defendant.

A B, of ————, a citizen of the state of ——— ———, and C D, of ————, a citizen of the state of ———— [or A B, and C D, doing business in the city of ————, state of ————, under the firm name of ———— and E F, of ————, a citizen of the State of ————], bring this, their bill against, etc.

No. 282.

Executor against Corporation. (a)

A B, executor of the last will and testament of M N, deceased, late of ————, and a citizen of the state of ————, brings this his bill against the X Y, a corporation organized and existing under and by virtue of the laws of the state of ————.

(a) See Desty's Fed. Proc., sec. 26.

No. 283.

The United States against a Corporation and Citizen. (a)

The United States of America, by ————, its attorney-general, brings this its bill against the X Y Company, a corporation organized under and by virtue of the laws of the state of ————, and V W and Z, citizens of the United States, and of the state of ————, and residents of the state of ————.

(a) See Desty's Fed. Proc., sec. 475.

No. 284.

Corporation against Individuals. (a)

The A B Company, a corporation organized under and by virtue of the laws of the state of ————, brings this its bill against V W, of ————, a citizen of the State of ————, and X Y, of ————, a citizen of the State of ————.

(a) See Desty's Fed. Proc., sec. 26.

No. 285.

Husband and Wife.

A B, of ————, a citizen of the state of ——— ———, and C B, his wife, bring this their bill against ————.

No. 286.

Wife Suing Alone. (a)

C B, of, etc., wife of A B, of the same place, by E F, of, etc., her next friend, brings this her bill against ————.

(a) Eq. R. 87.

No. 287.

Wife by Next Friend: Husband a Defendant. (a)

C B, the wife of the defendant A B, by E F, of, etc., her next friend, the above-named plaintiff, brings this her bill against ————.

(a) Eq. R. 87.

No. 288.

Same: Husband Residing Abroad. (a)

C B, of (residence), the wife of A B, who is now residing at G, out of the jurisdiction of this honorable Court, by E F, of, etc., her next friend, the above-named plaintiff, brings this her bill against ————.

(a) Eq. R. 87.

No. 289.

Wife as a Feme Sole.

C B, of (residence), the wife of A B, of etc., suing as a feme sole [or, but who has obtained a statutory order for protection from her husband], the above-named plaintiff, brings this her bill against ————.

No. 290.

Infants. (a)

A B and C B, of, etc., infants under the age of twenty-one years, by E F, their next friend, bring this their bill against ————.

(a) Eq. R. 87.

No. 291.

Lunatics, etc. (a)

A B, of, etc., a lunatic [or non compos mentis] by E F, of, etc., his guardian [or next friend, when plaintiff is of unsound mind, but, not so found by inquisition] [or committee of the (person and) estate of the said A B], brings this his bill against ————.

Or, A B, of, etc., E F, of, etc., committee of the [person and] estate of the said A B, and the said E F, bring this their bill against ————.

(a) Eq. R. 87.

No. 292.

Assignee of Insolvent Debtor.

A B, of, etc., assignee of the estate and effects of C D, etc., an insolvent debtor, brings this bill against ————.

No. 293.

A Person Deaf and Dumb. (a)

A B, of, etc., being deaf and dumb, by C D, of, etc., trustee, his next friend, etc., brings this bill against ————.

(a) Eq. R. 87.

Prayers for Relief in Special Cases.

No. 294.

For Specific Performance of Contract For Sale and Purchase of Real Estate. (a)

That the said [vendor] be compelled by the decree and order of the Court to accept the said sum of money above-named as part of the purchase price of the said above-described property, and to convey, make, and execute to your orator a good and sufficient deed to said property, towit: [describe the property].

(a) As to specific performance, see Hunt v. Rousmanier's Admrs., 1 Pet. 1; Willard v. Tayloe, 8 Wall. 557.

No. 295.

Another Form (Suit by Vendor).

That the said [purchaser] may be compelled by the decree of this honorable Court specifically to perform the said agreement with the plaintiff, and to pay to him the remainder of the said purchase money, with interest for the same from the time said purchase money ought to have been paid, the plaintiff being willing and hereby offering specifically to perform the said agreement on his part, and, on being paid the said remaining purchase money and interest, to execute a proper conveyance of the said premises to the said [purchaser] and to let him into possession of the rents and profits thereof from the said —— day of ——, 18——.

No. 296.

Another Form (Short).

That the defendant may be decreed specifically to perform the said agreement of the —— day of ———, 18 ——, the plaintiff hereby offering specifically to perform the said agreement on his part; and that for the purposes aforesaid all proper directions may be given and inquiries made.

No. 297.

Of Agreement to Execute Mortgage of Indemnity.

That the defendant may be decreed specifically to perform the said agreement and to make a mortgage to the plaintiff of the said estate and premises to indemnify him against the obligation he has entered into with [————], as hereinbefore described, and that it may be referred to a master to settle such mortgage if the parties should differ about the same.

No. 298.

Of Contract to Make a Policy of Insurance.

That the said agreement of the defendants to execute and deliver to your orators a policy of insurance according to the terms of the aforesaid paper ———, and in accordance with the defendant's contract of insurance, as aforesaid, may be specifically performed, your orators hereby undertaking to perform their undertakings in the premises.

No. 299.

For Foreclosure of Mortgage. (a)

That an account may be taken by or under the direction of this honorable Court of what is due for the principal and interest on the said mortgage, and that the said defendants or some one of them may pay unto the plaintiff the money which shall be found due to him by a short day to be appointed for that purpose by this honorable Court, or in default thereof that all the said defendants and all persons claiming or to claim by, from, or under them or any of them may be absolutely barred and foreclosed of and from all right and equity of redemption of, in, and to the said property, and every part thereof, or if, on any account, the plaintiff is not entitled to any such foreclosure, then that the said property may be sold and all proper parties may join therein, and that the money so due to the plaintiff may be paid to him out of the money which shall be raised by such sale.

(a) As to foreclosure suit, see Desty's Fed. Proc., sec. 88; Sheldon v. Sill, 8 How. 441.

No. 300.

Another Form.

That the above-named X Y, E F, and G H, the defendants in this suit, may appear before this honorable Court, and answer this your orator's bill, according to the rules and practice of the said Court, without oath, their answers on oath being hereby waived, and that the usual decree may be made for the sale of the mortgaged premises aforesaid, and for the payment of the amount due to your orator for principal

and interest upon the said bond and mortgage, and his costs of this suit, and that the said defendants, and all persons claiming under them subsequent to the commencement of this suit, and all other persons, although not parties to this suit, who have any liens by judgment or decree upon the mortgaged premises subsequent to the said mortgage of your orator, or any liens or claims thereon by or under any such subsequent judgment or decree, either, as purchasers, incumbrancers or otherwise, may be barred and foreclosed of all equity of redemption in the said premises. And that your orator may have such further, or such other relief as the nature of the case may require, and as to this Court, may seem proper and agreeable to equity.

J. E.,
Solicitor for complainant.
R. M.,
Of counsel.

Schedule A, referred to in the preceding bill (being a description of the mortgaged premises as contained in the mortgage.)

No. 301.

For Redemption of Mortgage—Mortgagee in Possession. (a)

That an account may be taken of what, if anything, is due to the said defendant for principal and interest on the said mortgage, and that an account may also be taken of the rents and profits of the said mortgaged premises which have been possessed or received by the said defendant or by any other person or persons by his order or for his use, or which, without his willful default or neglect, might have been re-

ceived; and, if it shall appear that the said rents and profits have been more than sufficient to satisfy the principal and interest of the said mortgage, then that the residue thereof may be paid over to the plaintiff, and that the plaintiff may be permitted to redeem the said premises, the plaintiff being ready and willing and hereby offering to pay what, if anything, shall appear to remain due in respect to the principal and interest on the said mortgage; and that the said defendant may be decreed to assign and deliver up possession of the said mortgaged premises to the plaintiff or to such person as he shall direct, free from all incumbrances made by him or by any person claiming under him, and may deliver over to the plaintiff all deeds and writings in his custody or power relating to the said mortgaged premises.

(a) Gordon v. Hobart, 2 Sumner, 401.

No. 302.

For Redemption of Personal Property.

That an account may be taken for what is due to the said defendant for principal and interest in respect of the said loan of $————, and that, upon payment thereof by the plaintiff, the said defendant may be decreed to deliver over to the plaintiff the said goods so deposited with him as aforesaid.

No. 303.

For an Accounting of Money Had and Received. (a)

That the defendants may set forth an account of all and every sum and sums of money received by

them, or either of them, or by any person or persons by their, or either of their, order, or for their, or either of their use, for or in respect of the said [as the case stated in the bill may be], and when and from whom and from what in particular all and every such sums were respectively received, and how the same respectively have been applied or disposed of.

(a) Desty's Fed. Proc., sec. 243.

No. 304.

For an Accounting on Termination of Partnership.

That an account may be taken of all and every the said late copartnership dealings and transactions until the time of the expiration thereof, and also an account of the moneys received and paid by your orator and the said defendant, respectively, in regard thereto, and that the said [defendant] may be directed to pay to your orator what, if anything, shall, upon such account, appear to be due to him, your orator (a) being ready and willing and hereby offering to pay to the said [defendant] what, if anything, shall appear to be due to him from the said joint concern. (If a receiver is desired, say.) [And that some proper person may be appointed to receive and collect all moneys which may be coming to the credit of the said late copartnership]. And that the said [defendant] may in the mean time be restrained by the order and injunction of this honorable Court from collecting or receiving any of the debts due and owing to the said late copartnership.

(a) Columbian Gov't v. Rothschild, 1 Simons, 103.

No. 305.

For an Accounting of Rents and Profits of a Testator's Real Estate.

That said defendants may set forth a full, true, and just rental and particular of the real estates whereof or whereto the said testator was seised or entitled in fee simple at the time of his death, and also a full, true and particular account of all and every sum and sums of money which has or have been received by them, or either of them, or any other person or persons by their, or either of their, order, or for their, or either of their, use, for or in respect of the rents and profits of the said estates or any part thereof; and whether any and which of said estates, or any part or parts thereof, have or has not been disposed of or sold, and at what price or prices, respectively, and when and to whom; and whether such price or prices, respectively, have or has not been paid, and to whom; and if not, why not.

No. 306.

For an Account of Personal Estate of a Testator.

That said defendants may discover and set forth a full, true and particular account of all and singular the personal estate and effects of the said testator, and of every part thereof, which has been possessed by, or come to, the hands of the said defendants, or either of them, or to the hands of any other person or persons by their, or either of their, order, or for their, or either of their, use; with the particular nature, qualities, quantities and true and utmost values thereof, and of every part thereof, respectively, and how the same and every part thereof has been applied and disposed of; and whether any, and what

part thereof, now remains unapplied and undisposed of, and why; and whether any and what part of such personal estate remains outstanding to any and what amount, and why; and that the said defendants may also set forth an account of the debts due from the said testator, and of his funeral and testamentary expenses and legacies, and whether any and which of such debts are outstanding, and why.

No. 307.

For an Accounting by Agent.

That an account may be taken of all sums of money received by or come to the hands of the defendant as such agent of the plaintiff as aforesaid, for or on account of or for the use of the plaintiff, and of the application thereof and of all dealings and transactions of the defendant as the plaintiff's agent; and that the defendant may be decreed to pay to the plaintiff what, on taking such accounts, shall be found due from the defendant to the plaintiff, and to deliver up to the plaintiff all documents in the defendant's possession or power belonging to the plaintiff; that the defendant may pay the costs of this suit.

No. 308.

For Winding Up Affairs of Partnership. (a)

That the said land and buildings in [describing them] may be adjudged and decreed to be partnership property, and assets of the said late firm of ——— ——, and that the same may be ordered to be sold under the direction of this honorable Court for the purpose of winding up the concern, and that a receiver of all the copartnership assets and property now unadministered by your orator may be appointed, and

that proper and just accounts may be taken between the parties touching the matters in question; and that the estate of the said ————, deceased, may be charged with a fair rent for said dwelling-house during the time it was in his occupation, and for such further time, if any, as may seem meet to this honorable Court; and that all the affairs and concerns of said late firm of ———— may be wound up, adjusted and closed, under the direction of this honorable Court, and, after payment of all the debts of the concern and the partnership balance which may be found due to your orator out of the assets, that the surplus may be divided between your orator and the administrator or heirs of the said ————, according to their respective rights therein, and as to justice and equity may appertain.

And that in the mean time said administrator, widow and heirs of said ———— may be restrained and enjoined from proceeding to take any steps to sell said real property or interest therein, or from any proceeding touching said real estate, or any of it, adverse to the claims and interests of your orator until the relative rights and interests therein of your orator and the said defendants may be settled and determined.

(a) Desty's Fed. Proc., sec. 243.

No. 309.

For Damages Against Agent for Mismanagement.

That they, the said [agents] may be decreed to pay to your orator the said sums of $——— and $———, and such losses, damages and interest as your orator has suffered by reason of the premises, and that your orator may have such other relief as the nature

of his case may require; and that the said ———— may, if they can, show why your orator should not have the relief hereby prayed.

Note.—The prayer for general relief is included in the above Form.

No. 310.

For Cancellation of Land Patent and Deeds. (a)

That the patent purporting to convey title to said above described lands may be set aside and canceled and declared null and void, and that the several mesne conveyances from [original patentee] to said defendants herein may be set aside, canceled and declared null and void.

(a) Boyce v. Grundy, 3 Pet. 210; Desty's Fed. Proc., sec. 243.

No. 311.

For Cancellation of Will and Deed—Fraud Alleged. (a)

That said defendants may be required to produce said alleged writing and that it may be adjudged and decreed that said ———— never made the said alleged will, nor executed the said alleged deed, but that she died seised of the property aforesaid and intestate, and that said writing be decreed to be false and fraudulent and ordered to be delivered up to be cancelled and annulled according to the practice of Courts of Equity in like cases.

(a) Desty's Fed. Proc., sec. 243.

No. 312.

For Cancellation of Deed. (a)

That the said deed to said lots [describe them], dated———— ——, 18——, be set aside, annulled and

held for naught, and that the defendants be required to surrender up the same to be cancelled; and that they, and each of them, be forever restrained and enjoined from setting up or claiming any estate, right, title or interest in or to the premises described in said deed, and that complainants be decreed to be the owners thereof and entitled to the possession of the same.

(a) Desty's Fed. Proc., sec. 243.

No. 313.

For Reformation of Deed on the Ground of Mistake.

(a)

That the deed of conveyance from ———— to ————, dated ———— ——, 18——, of the property hereinbefore described, may be reformed and made to conform to the true intent and purpose for which the property was purchased, and to that end it may be made to include the same uses and trusts raised, created and declared in the prior deed from ———— —— to ————, according to the understanding and agreement of the parties.

(a) From Walden v. Skinner, 107 U. S. 382.

No. 314.

In Bill By Assignees to Protect Estate of Insolvent.

(a)

That the said ———— may be directed by a decree of this honorable Court to convey to them the said assignees the debt of the said ————for the benefit of the creditors of said insolvent debtors, and to be held and distributed by your orators according to law; and that the said ———— may be re-

strained by the order and injunction of this honorable Court from levying any execution which they may obtain in said action upon said credits in the hands of said ————, and be ordered and decreed to relinquish and abandon said attachment.

(a) Dehon v. Foster, 4 Allen, 545; 7 Allen, 57.

No. 315.

By Next of Kin for Account and Distribution and to Restrain Sale. (a)

That an account may be taken, under and by the direction of this honorable Court, of the personal estate and effects of the said ————, intestate, ——— ———, possessed by or come into the hands of the said defendant ———— his administrator, or to the hands of any other person or persons by his order or for his use; and also an account of the said intestate's debts and funeral expenses, and that the said intestate's personal estate may be applied in a due course of administration; and that the clear residue thereof may be ascertained, and that your orators, respectively, may be paid one part each of such clear residue; and that in the meantime the said defendant ———— may be restrained by the injunction of this honorable Court from selling or disposing of [state property about to be sold].

(a) Gould v. Gould, 3 Story 516; Pratt v. Northern, 5 Mason, 95; Allen v. Simons, 1 Curtis, 172; Mallett v. Dexter, 1 Curtis, 178; Steans v. Page, 1 Story, 204; Sands v. Champlin, 1 Story, 376; Langdon v. Goddard, 2 Story, 267.

No. 316.

Another Form. (a)

That an account may be taken of the personal estate of the intestate come to the hands of the defend-

ant, or of any person or persons by his order or for his use.

That an account may be taken of the debts and funeral expenses of the intestate; that the clear residue of the personal estate of the intestate may be ascertained, and that one equal ——— part of such residuary estate may be decreed to be paid to each of your orators, and that another equal ——— part thereof may be decreed to be paid to the defendant and to each of them, the said ——— and ———.

(a) Desty's Fed. Proc., sec. 243.

No. 317.

In Bill of Interpleader. (a)

That said defendants may be decreed to interplead together, and that it may be ascertained in such manner as this honorable Court shall direct to which of them the said sum of money ought to be paid; and that your orator may have leave to pay the same into Court, which he offers to do, for the benefit of such of the parties as shall be found or decreed to be entitled thereto; and that the said persons be in the meantime restrained from commencing or prosecuting any suit at law against your orator in his said capacity touching the said sum of money.

(a) Foster's Fed. Practice, sec. 88; Daniell's Ch. Pr., 5 Am. ed., p. 1560.

No. 318.

Another Form, By an Executor. (a)

Wherefore, your orator prays that the said several defendants may be decreed to interplead and state their several claims upon your orator in the execution of his said trust as executor, so that the Court

may adjudge whether a sufficient sum shall be taken from the assets of the estate in the hands of your orator to pay said mortgage debt and the interest thereon, or whether the same shall be paid to the defendants claiming under the residuary clause of said will.

(a) Houghton v. Kendall, 7 Allen, 72.

No. 319.

In Bill for Payment of Legacies and to Carry the Trusts of a Will into Execution. (a)

That an account may be taken of what is due and owing to your orator for the principal and interest of the said legacy, and that the said defendant may be decreed to pay the same to your orator; and if the said defendant shall not admit assets of the said testator sufficient to answer the same, then that an account may be taken of the estate and effects of the said testator which have been possessed or received by the said defendant, or by any other person by his order, or to his use, and that the same may be applied in due course of administration.

(a) Desty's Fed. Proc., sec. 243.

No. 320.

To Have Trust Declared as to Real Estate. (a)

That said XY company be decreed to have furnished the money to said R. S., which he paid to said E. F. for said contract and land; that said R. S., in procuring said contract and land, acted as the agent and trustee of the said company; that the said trust be declared; that the said company be decreed to be the beneficial party in interest in said contract, and that under and by virtue of said contract it acquired an

equitable interest in said land, and that your orator is now the owner and holder of the equitable right, title and interest in said contract and land so acquired by said X. Y. Company.

(a) Hinchman v. Smith's Executors, 49 Fed. Rep. 492; 7 U. S. App. 481.

No. 321.

Another Form as to Personalty. (a)

That the defendant, the XY Bank, may be by this honorable Court declared to have received and held the moneys of your orator as above alleged, amounting to a balance of $———, on the —— day of ———, so deposited with said defendant by the said A B as treasurer and tax collector of said ———— county, to be the money and property of your orator, and that the defendant, the XY bank, and the said VW, as receiver thereof, be decreed to be trustee thereof for the use and benefit of your orator; that your orator may have a lien upon all the moneys, choses in action, and other property in said X Y Bank to the amount of the balance of the funds of your orator so deposited as aforesaid, and that the said balance of $———, together with interest thereon from the —— day of ———, at the rate of —— per cent per annum, be returned to your orator.

Further prayers:

For an accounting by receiver and restraining order against paying out any money except to your orator ———— and ————.

For an injunction against bank and receiver.

(a) See County of Spokane v. First Nat. Bank, 68 Fed. Rep. 979; 29 U. S. App. 707.

No. 322.

For Injunction. (a)

That your Honors grant unto your orator your writ of injunction commanding said ———— and all persons claiming to act under his authority, direction or control, to absolutely resist and refrain from [state acts to be enjoined] until such time as your honors shall appoint and direct an order herein; and that upon such hearing the writ herein prayed for be made and confirmed until the final determination of this suit, and that thereupon the said injunction may be made perpetual.

(a) Tyler Mining Company v. Last Chance Mining Company, 90 Fed. Rep. 15; Desty's Fed. Proc., sec. 243.

No. 323.

Another Form. (a)

May it please your Honors to grant to your orator a writ of injunction pendente lite, issuing out of and in accordance with the rules and practice of this honorable Court, to be directed to the said defendant A B Company, to restrain it, its agents, servants, employees and confederates from entering into or upon the mine or mines, mining ground, lode, dips, drifts, cuts, excavations, or works, or upon any part of the land, property and premises hereinbefore particularly described, and from working or mining thereon or making or continuing any cut, opening or excavation on or in said mining ground, or any part thereof, any mineral, mineral deposit, ore, rock, or earth, or any mineral substance whatever, whether the same be in place or heretofore severed from the freehold, and from in any manner hindering or ob-

structing your orator or his agents, servants or employees, or any or either of them, in working or mining upon said premises, and from in any manner interfering with said premises or with anything thereon; as also a restraining order to the same effect until an application for such injunction can be heard, and that at the final hearing such injunction may be made perpetual.

Further prayer for an account of waste committed.

(a) Doe v. Waterloo Mining Co., 54 Fed. Rep. 935; 48 U. S. App. 411; Desty's Fed. Proc., sec. 243.

No. 324.

For Injunction as to a Patented Machine. (a)

Your orators pray your Honors to grant unto them a preliminary writ of injunction against the further prosecution of said suit at law, and also a permanent writ of injunction issuing out of and under the seal of this honorable Court after the final hearing, directed to said X Y, and strictly enjoining him and his agents and employees not to make, or use, or sell, nor cause to be made, used, or sold, any ————, or other machinery, or apparatus, containing or employing the invention covered and secured by said letters patent issued to ————, or from further prosecuting said action at law.

Further prayers:

For an accounting of profits and for damages.

(a) Germain v. Wilgus, 67 Fed. Rep. 597; 29 U. S. App. 564; Desty's Fed. Proc., sec. 84.

No. 325.

In Bill to Quiet Title. (a)

That your Honors may adjudge and decree that the alleged claims of the defendants, and each of them, are invalid and void; that the defendants have not, nor has either of them, any estate or interest in the said property, or in any part thereof; that your orator is the owner in fee of said property, and that the defendants, and each and every of them, be forever barred from asserting or claiming any estate or interest therein.

(a) Desty's Fed. Proc., sec. 243; Hearfield v. Bridge, 67 Fed. Rep. 333; 75 Fed. Rep. 47.

No. 326.

For Production of Deeds and Papers. (a)

That the said defendants may set forth a list or schedule and description of every deed, book, account, letter, paper or writing relating to the matters aforesaid, or any of them, or wherein or whereupon there is any note, memorandum, or writing relating in any manner thereto, which now are, or ever were in their, or either and which of their, possession, or power, and may particularly describe which thereof now are in their, or either and which of their, possession or power, and may deposit the same with the clerk in chancery of the ———— Circuit for the usual purposes, and otherwise that the said defendants may account for such as are not in their possession or power.

(a) Desty's Fed. Proc., sec. 244.

No. 327.

Conclusions.

Prayer for Process. (a)

And may it please your Honors to grant unto your orator a writ of subpoena, issuing out of and under the seal of this honorable Court, to be directed to the said ————, commanding him [them and each of them], on a certain day and under a certain penalty, in the said writ to be inserted, personally to be and appear before your honors in this honorable Court, and then and there full, true and perfect answer make, to all and singular the premises, and further, to stand, to perform, and abide such further orders, direction and decree therein, as to your honors shall seem meet and shall be agreeable to equity and good conscience.

(a) Desty's Fed. Proc., sec. 435.

No. 328.

Prayer for Process, Government Defendant. (a)

And may it please your Honors that the District attorney of the United States for the District of ——— ——— [or the attorney-general of the State of ——— ———], on being attended with a copy of this bill, may appear and put in answer thereto, and may stand to and abide such order, direction and decree in the premises as to your Honors shall seem meet.

(a) Sup. Ct. R. 5.

No. 329.

Prayer for Ne Exeat. (a)

May it please your Honors, the premises considered, to grant unto your orator, not only a writ of ne

exeat regno, issuing out of and under the seal of this honorable Court, to restrain the said defendant ——— ——— from departing out of the jurisdiction of this honorable Court, but also a writ of subpoena, etc.

(a) Desty's Fed. Proc., sec. 237.

No. 330.

Note at End of Bill When Interrogatories Are to Be Answered. (a)

Note.—The defendant A B is required to answer under oath all of the above special interrogatories, numbered respectively 1, 2, 3 and 4.

The defendant C D is required to answer under oath the above special interrogatories numbered respectively 2 and 4.

(a) Eq. R. 40, 41, 42.

Subsection 2.

Bills of Complaint.

No. 331.

Bill for Sale and Foreclosure. (a)

[Title of Court and Cause.]

Bill of Complaint.

[To the Honorable, the Judges of the Circuit Court of, etc.]

(Commencement, see Forms Nos. 280, 281, etc.), and thereupon your orator complains and says:

I.

That on the tenth day of June, one thousand eight hundred and forty-one, XY, of ————, in the county of ————, State of ————, executed under his hand and seal and delivered to your orator a bond bearing date on that day, in the penal sum of one thousand dollars, with a condition thereunder written, in substance that if the obligor in the said bond, his executors or administrators, should pay or cause to be paid, to the obligee therein named, his executors, administrators or assigns, the sum of five hundred dollars on the —— day of ———, one thousand eight hundred and ———, with interest, then the said bond to be void, otherwise to be and remain in force, as by the said bond ready to be produced by your orator as this Court shall direct, will more fully appear. And the said X Y, to secure the payment of the principal and interest mentioned in the condition of the said bond, did at the same time execute, under his hand and seal, and deliver to your orator, a mortgage bearing even date with the said bond and conditioned for the payment of the said sum of five hundred dollars with the interest thereon according to the condition of the said bond, by which the said mortgagor mortgaged unto your orator in fee, certain lands and real estate, a description of which, taken from said mortgage, is contained in the schedule hereto annexed, marked A.; which mortgage was duly acknowledged, and was afterwards recorded as a mortgage in the office of the clerk of the county of ————, on the —— day of ———, one thousand eight hundred and ———, at —— o'clock in the —— noon in book — of mortgages on page ——; as by the said mortgage, and the certificates of acknowledgment, and of the recording aforesaid indorsed there-

on, and ready to be produced as this Court shall direct, will more fully appear.

II.

And your orator believes and states that the sum of five hundred dollars, with interest from the —— day of ———, one thousand eight hundred and———, remains due and unpaid to your orator, and that no proceedings at law have been had to recover the debt secured by the said bond and mortgage, or any part thereof.

III.

And your orator believes and states that E. F. and G. H. have or claim some interest in the said mortgaged premises, or in some part thereof, as purchasers, mortgagees or otherwise, which interests, if any, have accrued subsequent to the lien of the mortgage of your orator, and are subject thereto.

Your orator therefore asks the aid of this Court in the premises and [Conclusion, see Form No. 300].

Schedule A., referred to in the preceding bill, being a description of the mortgaged premises, as they are described in the mortgage therein referred to.

[Insert description of premises, as contained in the mortgage.]

(a) Desty's Fed. Proc., sec. 88.

No. 332.

Suit to Quiet Title. (a)

[Title of Court and Cause.]

To the Honorable Judges of the Circuit Court of the United States, Ninth Circuit, Northern District of California:

William Megginson, a citizen of Ohio, brings this bill against the Lone Jack Mining Company, J. F. Turner, Jacob Bertz, Humphrey Lawrence, and George L. Brown, residents within the State of California, and citizens of said State, and for cause of complaint against said defendants, your orator complains and says:

1. That he is now, and was at all the times herein mentioned, a citizen of the United States of America, and is now and was at all of said times a citizen of and within the State of Ohio.

2. That at all of the times herein mentioned the Lone Jack Mining Company is and was a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business and its office within the said State of California, and that it is and was at all of said times a citizen of the State of California, and a resident of the Northern District of California.

3. That at all the times herein mentioned said defendants, J. F. Turner, Jacob Bertz, Humphrey Lawrence and George L. Brown, were, and each of them now is, a citizen of the State of California, and a resident within the Northern District of California.

4. Your orator further shows that he is now and for a long time hitherto has been in the possession of that certain mining property commonly known and designated as the Lone Jack Quartz Mine, which said mine is situated at Slug Gulch, within one mile of Garden Valley Mining District, county of El Dorado, State of California, said mine being in section 28, township 12 north, range 10 east, Mount Diablo Meridian. That the said mine and mining claim run fifteen hundred (1500) linear feet along the course of the lode and three hundred (300) feet on each side of the middle of said lode, and form a parallelogram fifteen hundred

(1500) feet in length and six hundred (600) feet in width.

5. That your orator is the owner of the title to said mining claim and premises, together with all of the improvements thereon. That the said defendants, and each of them, claim an interest in said premises adverse to the claims of your orator, but that the nature of said claims of defendants is to your orator unknown.

That the claims of the said defendants are, and each of them is, without any right whatsoever, and that none of the defendants have any estate, right, title, or interest whatsoever in said lands or premises, or any part or portion thereof.

6. And your orator further shows that said mining claim and premises are of great value, to wit, of the value of ten thousand ($10,000) dollars and upwards; and that your orator, ever since the first day of June, 1894, has been, and now is, the owner of said mining property, and the whole and every part of said location, together with the improvements thereon.

In consideration whereof, and inasmuch as your orator can have no adequate relief except in this Court, and to the end, therefore, that the defendants may, if they can, show why your orator should not have the relief prayed, and may make a full disclosure and discovery of all the matters aforesaid, and, according to the best and utmost of their remembrance, knowledge, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged; but not under oath, an answer under oath being expressly waived.

And your orator prays that your Honors may decree that said defendants, and each of them, have no estate or interest whatsoever in or to said lands or premises; and that the title of your orator is good and

valid, and that the said defendants, and each of them, be forever enjoined and restrained from asserting any claim whatsoever in and to said lands and premises adverse to your orator, and for such other and further relief as the equity of the case may require, and to your Honors may seem meet.

May it please your Honors to grant unto your orator a writ of subpoena of the United States of America, directed to the said Lone Jack Mining Company, J. F. Turner, Jacob Bertz, Humphrey Lawrence, and George L. Brown, and to such other as shall in the discretion of your Honors appear necessary to the hearing and determination of this cause, commanding them on a day certain to appear and answer unto this bill of complaint; and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

REDDY, CAMPBELL & METSON,
Solicitors for Complainant.

(a) Desty's Fed. Proc., sec. 243; Hearfield v. Bridge, 67 Fed. Rep. 333; 75 Fed. Rep. 47; Lone Jack Mining Company v. Megginson, 82 Fed. Rep. 89; 48 U. S. App. 452.

No. 333.

Suit to Quiet Title and for an Injunction and Restraining Order. (a)

[Title of Court and Cause.]

To the Honorable, the Judges of the Circuit Court of the United States for the District of Idaho:

The Tyler Mining Company, a corporation organized and existing under the laws of the State of Oregon, brings this its bill against the defendants abovenamed, and thereupon your orator complains and says:

1. That your orator is a corporation organized in the year 1886, under the laws of the State of Oregon, and that it then acquired and ever since has held, owned, and now owns the property which is hereinafter described as the Tyler Mine, which lies and is situated in the county of Shoshone, Yreka Mining District, State of Idaho, and has been, and now is, engaged in the business of developing the same, and has its agents therein entrusted with the local management and authority pertaining to the same required by the laws thereof.

2. That the said Charles Sweeney, Kennedy J. Handley, J. Quackenbush, Alexander Ross, John Pressly, and Frank Hyatt are each and all residents and citizens of the State of Idaho.

That the defendant corporation, the Last Chance Mining Company, is a corporation organized, or claiming to be organized and existing under the laws of the Territory of Washington, and has an office and is doing business within the county of Shoshone and State of Idaho.

That the defendant corporation, the Republican Mining Company, is a corporation organized under the laws of the State of Washington, and is engaged in business at said Shoshone County, State of Idaho.

That the defendant corporation, the Idaho Mining Company, is a corporation also organized and doing business under the laws of the State of Washington, and having an office and agent for the transaction of business at said Shoshone county, State of Idaho.

That said Charles Sweeney is the agent and manager of said first named corporation, also of said last named corporation, in said county, State of Idaho; and that the said Kennedy J. Handley is the agent and manager of the business of said Republican Mining Company in said county and State.

That said Frank R. Moore is a citizen of the county of Spokane, State of Washington, and that all the other defendants named reside in and are citizens of the said Shoshone county, State of Idaho.

4. And your orator further shows:

That heretofore, towit, on the —— day of ———, 1885, the land and premises hereinafter described and ever since known as the Tyler Mine, was public, unoccupied, and vacant mineral land of the United States, open to exploration, location, and occupation as such. That on that day C. E. Tyler, S. R. Devine, and J. P. Smith, who were then each of them citizens of the United States, qualified to enter upon and locate mineral land, in accordance with laws of the United States, entered into and upon and claimed the same as a mining claim.

That on said day they discovered a vein or lode of rock in place bearing silver, lead, and other valuable metals and minerals in said premises, and thereupon located the same by the erection of the stakes and monuments required by the local laws to mark the boundaries on the ground so that they could be readily traced and known, and by the posting of the notices thereon required by law, and within twenty days thereafter caused a copy of said notice and description of said claim to be recorded in the county recorder's office in the county of Shoshone, State of Idaho.

That immediately thereafter the said locators commenced to work upon and develop the lode so by them discovered and from then hitherto until the present time the said locators and their grantees, including the complainant, have each year done and performed more than one hundred dollars worth of labor in the development of said location and mine, and have done and performed all the acts and things required by

the laws of the United States and the local laws governing the possessory rights in said mining district and State necessary to maintain and preserve their right to said premises as a mining location and claim.

5. Your orator further shows:

That by certain mesne conveyances, duly executed and recorded in said county, your orator, on or about the —— day of August, 1896, succeeded to all the rights of the original locators above named in and to said location and claim, and since said date has been in possession of all the surface, and entitled to possession of all surface, and of all veins, lodes, and ledges of minerals therein contained, and that the surface description of said premises as originally located is as follows:

Beginning at, etc. [description follows]:

6. Your orator further shows that it caused said claim to be officially surveyed by direction of the United States surveyor general of Idaho for the purpose of making its application to the proper land office of the United States for a patent, and on or about the —— day of April, 1887, the official plat and field notes of said survey were filed by this complainant in the land office of the United States at Coeur d'Alene city, Territory of Idaho, together with its application for a patent for said premises, and with the proper proofs as required by law of its rights to the same.

That said application having been found by the proper officer to be in due form of law, the usual notice of your orator's application was given by the register of said land office, and that pending said application the said Last Chance Mining Company, defendant, filed its protest and adverse claim thereto,

whereby it set up and asserted that a small portion of the premises described in the application of your orator for a patent as part of the Tyler location was the property of and included premises claimed by said corporation as part of the Last Chance Mining Claim or location.

7. Your orator further shows that to avoid controversy between your orator and the Last Chance Mining Company, and claim as to their respective rights in said disputed premises, your orator consented to relinquish all claim to the conflict ground, and thereupon the Tyler claim and location boundaries were made as shown by the following diagram—Exhibit "A"—attached hereto and made a part hereof, the description being as follows:

Beginning etc. [descr.ption follows]:

8. Your petitioner further shows that having thereby relinquished 427.4 feet off the southeasterly end of its location and claim—the said abandoned ground—leaving to your orator a parcel of land 1,172.6 feet in length by 600 feet in width, upon which there was no opposing claim or controversy, and your orator being willing to accept as and for its claim to said entire Tyler location, the premises so ceded to it, and to which no adverse claim existed, and it appearing to said land office that your orator was entitled to enter said premises and have its patent issue therefor, accepted the purchase price on behalf of the United States for your orator, and issued to it its receipt therefor, and thus assuring to your orator its right to a patent for its said claim as entered at said office as shown on said diagram—Exhibit "A."

9. Wherefore, your orator further shows and avers that it is the owner in fee of the premises now claimed as shown by said diagram—Exhibit "A"—in

said last mentioned description, and that its rights therein are coeval with the location of said mine as aforesaid, and entitled to all lodes or ledges of mineral-bearing rock and earth therein, the tops or apexes of which lie within the surface boundaries thereof.

10. Your orator further shows that a large lode of mineral-bearing rock and earth in place is found throughout the entire length of said Tyler location so owned by your orator. That the same passes through the southeasterly end line, and has its apex within the side line thereof throughout the entire length and extent of the location and claim. That the dip of or inclination of said vein from the horizon in its descent into the earth is at about an angle of forty degrees, and the general strike or course of said lode is nearly or quite coincident with the surface side lines thereof, and your orator is entitled under the provisions of the laws of the United States granting said mineral lands to your orator as an appropriator thereof, and to all and every part of said lode or of any lode which has its apex within the said surface boundaries of said claim.

11. Your orator further shows that the defendants herein own or claim to own a certain mining claim to the southeast of your orator's said Tyler claim and for a long time past the defendants Sweeney, Moore, Handley, and others, and the said Last Chance Mining Company, have been engaged in working on the same vein, which, passing through the southeasterly end line of your orator's premises on its strike or course, crosses upon adjoining ground.

12. Your orator further shows that said defendants, combining and confederating with the other corporations named, and the said other defendants by means of a tunnel which enters the earth at a point some

hundred feet distant from the southeasterly end line of the Tyler ground, and which was not made with any apparent design to enter upon or be driven into the direction of the lode which crosses in the Tyler ground, which has been so constructed as to secretly, underground, by changing the direction thereof, reach and strike the vein belonging to your orator. That at a point about five hundred feet in depth from the surface cropping of the lode on the Tyler claim, your orator, pursuing its lode by the incline on its dip downward and inside its surface end lines extended in their own direction, and more than four hundred feet southwest of the southeasterly end line so extended, on the twenty-fourth day of June, 1891, broke into the works then being operated by said defendant on your orator's said Tyler lode.

That the point where the works of your orator and said defendant's intersected each other is indicated correctly on diagram marked Exhibit "A," which is hereto annexed and made a part hereof.

13. Your orator further shows that said defendants have taken and mined, through their said secret underground tunnel and works, out of the lode so cropping on said Tyler ground belonging to your orator, ores containing silver, lead, and other minerals of the value of not less than $200,000.00 and have sold the same and converted them to their own use; all of which was without the knowledge or consent of your orator, and in fraud of its rights, and to the waste and destruction of its property.

14. Your orator further shows that the defendants pretend to have some claim to the ores contained in said Tyler Lode, and assert that they, or some of them, are the lawful owners thereof, and entitled in virtue of some rights of ownership in neighboring surface ground to mine and extract the

same; all of which your orator avers is false, fraudulent and fictitious, and well known so to be by each and all of said defendants.

15. Your orator further shows that said defendants concealed the fact that they had been for a long time taking ore from the said lode and premises described and belonging to your orator, and to repeated inquiries made of them by the agents of complainants asserted that they were not mining in or on the lode of your orator, but at points southeast thereof, and in ground not claimed by your orator, and when their fraud, concealment, and trespass was discovered through the workings of your orator, they have refused to desist and refrain therefrom, and assert their right to continue the trespass and waste aforesaid under color of some right thereto, which they well know is false and fraudulent.

16. Your orator further shows that upon information and belief that among other pretenses the said defendants allege, that they are entitled to follow the vein which they or some of them claim to own, found in the Last Chance Mining Claim and location, and lying adjoining the Tyler on the southeasterly thereof. At other times they allege in like manner that they own, or some of them own, a piece of ground which they call the Republican Fraction, lying southwest of the Tyler surface claim, and covering a portion of the Tyler Lode on its dip therefrom; all of which pretenses your orator avers are false and fraudulent.

17. That no part of said lode that crosses inside the surface ground of said Last Chance Mine dips so as to include the premises claimed by your orator or the lode therein and the said pretenses are set up to justify and excuse the trespass and waste on your orator's property with full knowledge that the same are false, fraudulent, and fictitious.

18. Your orator further shows that the said defendants have in their employ in the work of said trespass and waste a force of men consisting of about 50 miners and workmen, and your orator alleges, on information and belief, that the daily output of ores so extracted by them from the Tyler Lode as aforesaid is not less than 100 tons of ore worth not less than $60.00 per ton. That the extraction of the same is exhausting the minerals therein, and ruining the value of said mine permanently. That said premises are of no value except for its mineral deposit, and that when this shall be exhausted, the value of the same will be totally destroyed. That the pretenses of the defendants to the right to mine said ore is a cloud upon the title of your orator to its lode, and is a damage to the value of its estate.

19. Your orator further shows and avers that the defendants keep your orator out of said works and keep secret from your orator the amount of said ores and the value thereof and mingle the same with other ores and thereby your orator will be wholly unable to establish or prove the value of the ores taken. That the defendants are doing the acts complained of with full knowledge of the truth as above stated, and threaten and avow that they will continue the same and your orator avers that unless restrained and enjoined by the process of this Honorable Court, the damage so threatened will be committed and will be irreparable.

20. Your orator further shows that it has commenced an action at law in this honorable Court to recover the value of the ores heretofore taken by the defendants from said vein and to recover the possession of said portion of said vein so in controversy and from which said ores have been taken and are threatened to be taken, and that this suit

is brought in aid of said action at law and to preserve said property from said acts threatened by defendants during the pendency of said action at law.

In consideration whereof, and for as much as your orator has no sufficient remedy at law for the wrong done and threatened to be done, and that the remedy at law will afford no protection to your orator against the trespass and waste done or being done, and threatened to be done, for the reasons hereinbefore stated, and is only relievable in a Court of equity where matters of this kind are properly cognizable and reviewable.

Your orator, to the end that it may obtain the relief to which it is justly entitled in the premises:

I.

Prays the Court to grant to it your writ of subpoena directed to the said Charles Sweeney, Kennedy J. Hanley, Frank R. Moore, and the other defendants hereinbefore named, requiring and commanding them, and each of them, to appear herein and answer under oath to the several allegations in this bill contained.

II.

That they be required to set forth any and every adverse interest, claim, or demand in or to said lode or premises, to the end that the same may be justly adjudicated, and declared null and void as against your orator, and that the title and ownership of your orator in and to said Tyler Mine, premises, and lode throughout its entire depth be established and confirmed as against any and all claims of the defendants, or either of them, and all cloud thereon forever removed.

III.

That your Honors grant unto your orator your writ of injunction, commanding the said defendants, and each of them, their servants, employees, and workmen, and all persons under their authority, direction or control to absolutely desist and refrain from entering into or upon any portion of the works lying to the northwest of the southeasterly end line of said Tyler Claim, and from working on or in the said premises, or taking any ores or minerals therefrom at any point on the westerly side of the said end line projected in its own direction southerly from the southeast corner of said Tyler Claim or lode, or any point of the dip of said Tyler Lode, whether inside of the said Tyler surface lines or exterior thereto, and whether said workings be inside the surface of said Republican Fraction Claim, said Last Chance Mining Claim, or whatever mining claim or ground may overlie the same; and until such time as your Honors shall direct and appoint a hearing herein.

IV.

That said defendants, and each of them, be restrained from the commission of any of the acts or doings hereby sought to be enjoined and that upon such hearing, the writ herein prayed for pending this suit be made and confirmed until the final determination of this suit, and of said action at law, and that thereupon said injunction be made perpetual.

V.

That upon the hearing of this suit and an adjudication, your orator be quieted and confirmed in its title to the said Tyler Claim and lode through-

out its entire extent, and that it be decreed the defendants have taken the ores and minerals from your orator as alleged by its bill, in fraud of its right.

VI.

And that your orator may have such other and further relief, preliminary and final, as to the Court may seem meet and proper, and which equity may require, and for costs.

ALBERT ALLEN,
Solicitor for complainant.

JOHN R. McBRIDE,
Of counsel.

(a) Desty's Fed. Proc., sec. 243; Tyler Mining Co. v. Last Chance Mining Co., 90 Fed. Rep. 15.

No. 334.

Bill for Injunction. (a)

[Title of Court and Cause.]

To the Honorable Judges of the above Court:

The United States of America brings this, its bill of complaint, against the Bellingham Bay Boom Company, whereupon your orator complains and alleges:

1. That this suit is brought by and under the direction of the attorney general of the United States.

2. That the defendant, the Bellingham Bay Boom Company, is and during all the time hereinafter mentioned was, a corporation, organized and existing under and by virtue of the laws of the State of Washington.

3. That the Noosack river is a navigable stream which empties into Puget Sound in Bellingham Bay, at the county of Whatcom, State of Washington, and

its waters are navigable from its mouth to a distance of several miles towards its source.

4. That the said defendant for a period of more than one year last past has maintained, and continues to maintain, an obstruction in the navigable waters of said river at and near where it empties into Bellingham Bay, as aforesaid, such obstruction consisting of a boom at which logs floated down said river are moored, the boom being constructed in such manner as to blockade the said river during a large portion of the year, rendering navigation thereon impossible during said time.

5. That the said river is used for navigation by steamboats and small crafts; and that said defendant has not obtained permission of the secretary of war of the United States to continue or to maintain said boom, and the said boom was constructed and is maintained without the permission of the said secretary of war, and is continued in the said navigable waters, aforesaid, without his consent.

Wherefore, your orator prays that a permanent injunction be granted enjoining said defendant from further continuing or maintaining the said obstruction, or any part thereof, and to cause the same to be removed, and for such other and further relief as to the Court may seem meet and equitable.

P. H. WINSTON,
United States Attorney.
By P. C. SULLIVAN,
Assistant United States Attorney, Solicitors and Counsel for Complainant.

(a) U. S. v. Bellingham Boom Co., 72 Fed. Rep. 585; 48 U. S. App. 443; 81 Fed. Rep. 658; Desty's Fed. Proc., secs. 243, 475; 26 Stat. 426, 453; 27 Stat. 88, 110.

No. 335.

Bill to Redeem Real Property by Heir of Mortgagor, Alleging Possession, Receipt of Rents and Profits, Commission of Waste and Actual Occupation of Part of the Premises, by Mortgagee. (a)

[Title of Court and Cause.]

To the Honorable, the Judges of the Circuit Court, etc.

AB of ————, in ——— county of ————, trader, the above-named plaintiff, brings this his bill of complaint against XY, of ————, in said county of ————, merchant, and thereupon your orator complains and shows as follows:

1. That CB, of ———— aforesaid, deceased, the father of your orator, being seised in fee-simple of a farm, situate in said ————, bounded and described as follows [here give description and boundaries], called the "————" did, by a deed of mortgage, dated the first day of ———, one thousand eight hundred and ———, grant and convey the said farm, with the appurtenances, unto the said XY, and to his heirs and assigns, with the proviso or condition that if the said CB, his heirs, executors, administrators, or assigns, should in one year from the date thereof, pay to the said XY, his ———, executors, administrators, or assigns, the sum of ——— thousand ——— dollars and interest thereon, agreeably to his promissory note ———— bearing even date with said mortgage deed, the said deed should be void, as by the said deed duly executed, acknowledged, and recorded, and here in Court to be produced, will more fully appear.

2. That the said sum of ——— thousand dollars and interest was not paid at the time appointed for that purpose.

3. That the said CB departed this life intestate,

on the —— day of ———, 18—, leaving your orator his only child and heir, who thereupon became entitled to the equity of redemption of the said mortgaged premises.

4. That the said XY entered into the possession of the said farm on the —— day of ———, ———, and into the receipt of the rents and profits thereof, and still retains the same.

5. That said CB, in his lifetime, at various different times, paid the defendant large sums of money upon and toward the amount of said promissory note and the interest thereon.

6. That the defendant, since he took possession of said farm, has cut large quantities of wood and timber on it and sold the same, and received large sums of money therefor.

7. That the defendant has himself personally occupied a part of the dwelling-house on said farm.

8. That your orator has frequently applied to the defendant and requested him to render a just and true account of the said rents and profits—of the payments made toward the mortgage debt—of the sums received for said wood and timber, and the rent with which the defendant should be charged for his occupation of the said house; and has offered to pay him any balance there may be justly due on said promissory note and interest, after making the proper deductions and allowances, and has requested him to deliver up the said farm to the plaintiff; but the defendant refuses so to do.

Whereupon ———— prays as follows:

1. That an account may be taken of the rents and profits which have been received by the defendant, or which, without his willful default, he might have received since he took possession of the said premises.

2. That an account may be taken of the sums of money paid to the defendant by said CB.

3. That an account may be taken of the said wood and timber so cut on the premises and sold by the defendant.

4. That the value may be fixed and an account may be taken of the rent of that part of said house occupied by the defendant.

5. That an account may be taken of what is due and owing upon said promissory note for principal and interest; and, in taking said account, that rests may be made from time to time, when and as the rents, profits, payments, money received for wood and timber, and the occupation rent shall appear to have exceeded the interest in arrear.

6. That your orator may be declared entitled to redeem said mortgaged premises upon payment of what, if anything, shall be found remaining due to the defendant in respect of the said principal and interest on said promissory note; and that the defendant may be ordered by a decree of this Court, upon said payment being made to the defendant, or into the hands of the clerk of this Court, to surrender and deliver up possession of said premises to the plaintiff, or in such other manner as he shall appoint or direct.

(a) Desty's Fed. Proc., secs. 2, 243; Gordon v. Hobart, 2 Sumner, 401; Turlock v. Robey, 15 Sim. 265.

No. 336.

Bill to Redeem Personal Property. (a)

[Title of Court and Cause.]

AB. of etc., the above-named plaintiff, brings this his bill of complaint against XY, of etc.

And thereupon your orator complains and says:

First.—That your orator, having occasion for a

sum of money for the purposes of his business, made application to said XY, the said defendant, to lend him the same, and thereupon the said XY, on or about ————, advanced and lent to your orator the sum of $———, and in order to secure the repayment thereof with interest, your orator deposited with the said defendant a box of tanned boot legs and tops, which were of the value of $——— and upward, and at the same time executed and delivered to the said defendant a bill of sale of the said goods, so deposited with him; but it was not meant and intended thereby, either by your orator or the said defendant that the said transaction should amount to an absolute sale of the said goods to the said defendant, but it was expressly agreed between your orator and the said defendant, that your orator should nevertheless be at liberty to redeem the same.

Second.—And your orator further showeth, that, being desirous to redeem the said goods, he has frequently applied to the said XY, and has offered to repay him the said sum of $———, with lawful interest thereon, on having the said goods redelivered to him, with which just and reasonable requests your orator well hoped that the said XY would have complied, as in justice and equity he ought to have done.

In consideration whereof [see Form No. 275]. To the end, therefore [see Form No. 277], that an account may be taken of what is due to the said defendant for principal and interest in respect of the said loan of $———, and that upon payment thereof by your orator the said defendant may be decreed to deliver over to your orator the said goods so deposited with him as aforesaid [and for further relief, see Form No. 278].

(a) Desty's Fed. Proc., secs. 2, 243.

No. 337.

Bill for an Account by Broker Employed to Purchase Stocks and for an Injunction Against Suit. (a)

[Title of Court and Cause.]

To the Honorable, the Judges of, etc.

AB, of ————, the above-named plaintiff, a citizen of the State of ————, brings this his bill against XY, of ————, a citizen of the State of ————, and thereupon your orator complains and says:

First.—Your orator, in the month of ———, in the year ———, entered into an arrangement with ————, the above-named defendant, that the said defendant should, from time to time, as the broker of your orator, purchase on his behalf certain foreign stock or securities, then commonly called or known by the names, etc., the price or purchase money of which the defendant was to advance; but your orator engaged on each transaction to deposit with the said defendant certain securities, that is to say, etc.

[The bill then proceeds to state that purchases had been made, moneys paid and advanced on both sides, and securities given by the plaintiff to the defendant, and that the defendant had sold certain Spanish debentures and scrip of the plaintiff at a lower price than he ought to have done, without the plaintiff's consent.]

Third.—Your orator further shows that the accounts in respect of the before-mentioned transactions and dealings are still open and unsettled; nevertheless, the defendant has commenced and is prosecuting an action at law against your orator for the recovery of the sum of $———, which he alleges is the balance or sum of money coming to him in respect of said transactions.

Fourth.—Your orator, however, charges, that if the accounts between your orator and defendant were properly taken, a considerable balance would be coming from the defendant to your orator.

Fifth.—Your orator avers that the said accounts cannot be properly taken except in a Court of equity.

To the end, therefore (Form No. 277), he now prays the Court:

First.—That the defendant may make a full and true discovery and disclosure of and concerning all and singular the transactions and matters aforesaid, and that an account may be taken by and under the direction and decree of this honorable Court, of all dealings and transactions between your orator and the defendant.

Second.—That in taking such account the defendant may be charged with the amount of dividends or coupons which were due on the said Spanish debentures at the time of the aforesaid alleged sale thereof by the said defendant, and also with such sums of money as would have been produced by the sale of such debentures, if the same had been sold at the price or rate of $——— per each $——— of the said stock.

Third.—That in taking such account the defendant may not be allowed to charge your orator with any sums of money which shall appear to have been paid or applied by him in the purchase of stocks or securities which were never actually transferred or delivered to the said defendant.

Fourth.—That the defendant may be charged with all benefit and advantage obtained by him in the said transactions of buying and selling, for and on account of your orator, beyond the amount of the usual and regular commission or brokerage.

Fifth.—That the balance which shall be found due

upon taking such account may be paid by the defendant to your orator, your orator being ready and hereby submitting to pay him any balance which shall be found due from him to the said defendant on the aforesaid accounts.

Sixth.—That in the meantime the said defendant may be restrained by the order and injunction of this honorable Court from further proceeding in the said action at law commenced by him against your orator as aforesaid, and from commencing or prosecuting any other action or proceedings at law against your orator in respect of or concerning the matters aforesaid or any of them.

(a) Desty's Fed. Proc., sec. 243.

No. 338.

Bill for a Dissolution of a Partnership Between Auctioneers, and for an Injunction to Restrain One of the Defendants from Collecting Debts. (a)

[Title of Court and Cause.]

Bill of Complaint.

To the Honorable, the Judges of, etc.

AB, of ————, and a citizen of the State of ————, brings this his bill against VW of ————, a citizen of the State of ————, and XY, of ————, a citizen of the State of ————, and thereupon your orator complains and says:

First.—That in or about the month of ———, your orator entered into an agreement with the said VW, and XY, to form a partnership with them in the business of auctioneers and appraisers, which agreement was reduced into writing, and signed by your orator and the said defendants, and was of the following

purport and effect, viz. (stating the same), as in and by the said agreement, reference being thereto had, will appear.

Second.—And your orator further shows that the said copartnership business was entered upon, and hath ever since continued to be carried on by your orator and the said defendants in pursuance of and under the aforesaid agreement, no articles or other instrument having ever been prepared and executed between them.

Third.—And your orator further shows that, having much reason to be dissatisfied with the conduct of the said VW, and being desirous, therefore, to dissolve the said partnership, your orator on or about ———, caused a notice in writing, signed by your orator, to be delivered to the said VW and XY, as follows, viz: "In conformity," etc., etc., as in and by such written notice, now in the custody or power of the said defendants, or one of them, when produced, will appear.

Fourth.—And your orator further shows that the said VW has, from time to time, since the commencement of the said partnership, applied to his own use, from the receipts and profits of the said business, very large sums of money, greatly exceeding the proportion thereof to which he was entitled, and, in order to conceal the same, the said VW, who has always had the management of the said copartnership books, has never once balanced the said books.

Fifth.—And your orator further shows that, having in the beginning of the year ——— discovered that the said VW was greatly indebted to the said copartnership, by reason of his application of the partnership moneys to his own use, your orator, in order to form some check upon the conduct of the said VW, requested that he would pay all copartnership moneys

which he received in to his bankers, and would draw for such sums as he had occasion for; but the said VW has wholly disregarded such request, and has continued to apply the partnership moneys received by him, to his own use, without paying the same in to the bankers, and has also taken to his own use moneys received by the clerks, and has by such means greatly increased his debt to the partnership, without affording to your orator and the said XY any adequate means of ascertaining the true state of his accounts.

Sixth.—And your orator further shows that he has, by himself and his agents, from time to time applied to the said VW, and has requested him to come to a full and fair account in respect of the said copartnership transactions, but the said defendant VW absolutely refuses so to do, and he at times pretends that he has not received and applied to his own use more than his due proportion of the partnership profits; whereas the plaintiff charges the contrary thereof to be truth, and so it would appear if the said VW would set forth a full and true account of all and every his receipts and payments in respect of the said partnership transactions, and of the gains and profits which have been made in each year since the commencement of the said partnership.

Seventh.—And your orator charges that the said VW has in fact received the sum of $——— and upward beyond his own proportion of the partnership profits, and that he is nevertheless proceeding to collect in the partnership debts and moneys, whereby the balance due from him will be increased, to the great loss and injury of the plaintiff and the said XY.

Eighth.—And your orator charges that the said VW ought, therefore, to be restrained by the order and injunction of this honorable Court from collecting and

receiving any of the said partnership debts and moneys.

And your orator charges that the said XY refuses to join your orator in this suit.

To the end, therefore (Form No. 277), he now prays the Court that the said copartnership may be declared void, and that an account (see Form No. 304).

And for further relief (Form No. 278), prays subpoena against XY, and subpoena and injunction against VW (see Forms Nos. 279 and 322).

(a) Desty's Fed. Proc., sec. 243.

No. 339.

Bill of Interpleader by a Purchaser Against Different Persons Claiming Payment for the Property Purchased. (a)

[Title of Court and Cause.]

To the Honorable, the Judges, etc.

AB, of ————, and a citizen of the State of ————, brings this his bill against Richard Salter, of ————, a citizen of the State of ————, P. and S. Schermerhorn, of ————, citizens of the State of ————, and copartners ————, and F. & B. of ————, citizens of the State of ————, and copartners ————.

And thereupon your orator complains and says:

First.—That, on the —— day of ———, your orator purchased of the defendant Salter a cargo of coal, then on board of a vessel, at ten dollars per chaldron, amounting to eleven hundred and twenty-five dollars, payable in a note at thirty days. That said coal was delivered to your orator, who paid Salter one hundred dollars on account.

Second.—That said defendants P. & S. Schermerhorn afterward issued an attachment against W. W. as an absent debtor, and the defendants F. & B. caused another attachment to be issued against W. W. as an absconding debtor, and warrants were issued in the usual form to the sheriff of ————, who gave notice to your orator not to pay over to any person except the sheriff, any property or money of W. W., and your orator was informed by the sheriff, and the attorneys of the defendants P. & S. S., and F. & B., that the coal so purchased by him was the property of W. W., for whom the defendant Salter was only an agent, and that your orator would be held liable if he paid the residue of the money —— to Salter.

Third.—That your orator has applied to the defendants for leave to pay the money to Salter without responsibility; and your orator has also, applied to Salter to relieve or secure him against the operation of the attachment, and any further responsibility which they respectively have refused to do, and that Salter has commenced a suit at law against your orator to recover the money.

Fourth.—That your orator is ready and willing to pay the said sum of money to such of the said persons, if any, as shall be found legally entitled to receive the same; but by reason that they persist in their several adverse claims, your orator is advised that he cannot safely pay the same, or any part thereof, to either of them; that the various persons claiming the same ought to interplead touching their respective rights, in order that your orator may be informed to whom the same ought to be paid and that they and each of them ought to be restrained by the order and injunction of this honorable Court from commencing or prosecuting any suit at law or

in equity against your orator in respect to the matters aforesaid.

To the end, therefore [Form No. 277], he now prays the Court:

To the end, therefore, he now prays the Court:

First.—That the said several defendants may set forth their several and respective claims, or disclaim all interest in and right to the said sum of money, or any part thereof, and that such of them, if any, as claim adverse interests therein, may be decreed (Form No. 317).

(a) Daniell's Ch. Pr., 5 Am. Ed., p. 1560; Foster's Fed. Pr., sec. 88.

No. 340.

Affidavit to Bill of Interpleader. (a)

[Title of Court and Cause.]

AB. of ————, maketh oath, and saith that he has exhibited his bill of interpleader against the defendants in this cause without any fraud or collusion between him and the said defendants, or any or either of them; and that the said AB, hath not exhibited his said bill at the request of the said defendants, or of any or of either of them, and that he is not indemnified by the said defendants or by any or either of them, and saith that he hath exhibited his said bill with no other intent but to avoid being sued or molested by the said defendants, who are proceeding, or threaten to proceed, at law against him for the recovery of the rent of the said ———, in the bill mentioned.

Sworn, etc.

A. B.

(a) Daniell's Ch. Pr., 5th Am. Ed., p. 1562.

No. 341.

Bill of Revivor. (a)

[Title of Court and Cause.]

The Honorable, the Judges of, etc.

AB, of ————, etc., brings this, its bill of revivor, against E H, G H, and J B, as executors of the last will and testament of XY, deceased, said E H, G H, and J B being citizens of the State of ————, and residents of the city of ———— in said State.

And, thereupon, your orator complains and says:

First.—That on or about the —— day of ———— [state filing and purport of the original bill by AB against XY, and the proceedings consequent thereon to the death of XY].

Second.—That during the pendency of the proceedings under said bill of complaint, to wit, on or about the —— day of ————, 18——, the said XY died, leaving a last will and testament, which on the —— day of ————, was admitted to probate in the ———— Court of ————, and letters of administration thereof were on the —— day of ————, duly issued out of said Court unto said E H, G H and J B, and still remain in full force and virtue.

Third.—Your orator further shows that the said suit having become abated by reason of the death of the said XY, as aforesaid, your orator is advised that he is entitled to have the same revived and restored to the same plight and condition in which it was at the time of the death of the said XY, and to have the same relief against the said EH, GH and JB.

Wherefore, your orator prays that the said cause may be revived by the decree of this honorable

Court, and that it may proceed to a decree in his favor in accordance with the prayer of the original bill of complaint herein.

Your orator further prays, etc. [prayer for process, Form No. 279], requiring them to appear and show cause if they have any, why this cause should not be revived and, if no cause shall be shown by said defendants, why said suit should not be revived; then that a decree be entered reviving said suit in favor of your orator.

(a) Desty's Fed. Proc., sec. 480; Sup. Ct. R. 15.

No. 342.

Bill to Perpetuate Testimony. (a)

Humbly complaining, your orator, AB, of ————, shows unto your Honors that WY, late of ————, deceased, was seised in fee of and in divers freehold estates which are hereinafter more fully described, and the said WY, being so seised as aforesaid, duly made and published his last will and testament in writing, bearing date the —— day of ———, signed by him, the said WY, and subscribed and attested according to law, and which said will, with the attestation thereof, is in the words and figures following, that is to say (set out will and the attestation verbatim), as by the said will and attestation clause thereof, reference being had thereto, will appear.

And your orator further shows unto your Honors that the said WY departed this life on or about the —— day of ———, without having revoked or altered his said will, leaving his brother, XY, of ————, the defendant hereinafter named, his heir at law, and upon the death of said testator, your orator, under and by virtue of said will, enter-

ed upon and took possession of all the said freehold estates thereby devised to your orator for his life, and your orator is now in possession thereof.

That the said XY pretends that the said will is void and ineffectual, and, although he will not dispute the validity thereof during the lives of the subscribing witnesses thereto, yet he threatens and intends to do so when they are dead, so that your orator may be deprived of their testimony.

Your orator further shows that all of the said subscribing witnesses are upwards of seventy years of age, and in feeble health [or are about to depart from this State], and that your orator fears the testimony of said witnesses may be lost by their death [or departure from the State] before the cause can be investigated in a Court of law.

In consideration whereof, etc., and that your orator may be at liberty to have the several subscribing witnesses to said will examined, and that your orator may have a commission or commissions for the examination of the said subscribing witnesses to the said will, to the end that their testimony may be preserved and perpetuated, and that your orator may be at liberty to read and make use of the same on all future occasions as he shall be advised.

May it please your Honors (Form 279).

(a) Daniell's Ch. Pr., 5th Am. Ed., p. 1573.

Note.—An affidavit of circumstances by which the evidence intended to be perpetuated is in danger of being lost, must be filed with the bill. See Daniell's Ch. Pr., loc. cit.

No. 343.

Amendment to Bill of Complaint. (a)

[Title of Court and Cause.]

To the Honorable, etc.

AB, by leave of the Court in that behalf first had and obtained, brings this, his amendment of its bill of complaint against said respondent, XY.

And thereupon your orator complains and makes amendment of its said bill of complaint herein, as follows:

First. After the word "money," in the last line of the sixth paragraph of said bill, insert: "Sixth ½. And your orator further shows that in and by said mortgage it was further provided, etc."

Second. And your orator makes further amendment of its said bill of complaint by erasing the thirteenth paragraph thereof, and in substitution and in lieu of said paragraph inserting the following: "Your orator further shows," etc.

Third. After the word "bonds," at the end of the fifteenth paragraph of the original bill of complaint, amend by adding the following: "And your orator further shows," etc.

Wherefore, your orator prays, as it has before prayed in its original bill of complaint (except as to, etc.), and, further your orator prays this Court will [state special relief desired]; and that said respondent may answer, but not under oath, such oath being hereby waived, according to the practice of this Court, all and singular the matters stated and charged in said original bill of complaint, and those hereinbe-

fore stated and charged in this your orator's amended bill of complaint.

_____,

Solicitors for complainant.

_____,

Counsel.

(a) Eq. R. 28, 29, 30; Desty's Fed. Proc., sec. 478.

Subsection 3.

Demurrers.

Classification of Demurrers.

I. To the jurisdiction.

(a) Subject of suit not within jurisdiction of equity.

(b) Some other Court of equity has proper jurisdiction.

II. To the person:

That plaintiff has not legal capacity to sue.

III. To substance of bill:

(a) Plaintiff has no interest in subject matter.

(b) Defendant answerable to some other person.

(c) Defendant has no interest in subject matter.

(d) Plaintiff not entitled to the relief prayed.

(e) Value of subject matter insufficient.

(f) Bill does not embrace whole matter.

(g) Want of proper parties plaintiff or defendant.

(h) Misjoinder of parties plaintiff.

(i) Remedy barred by time or laches.

(k) Multifariousness.

(l) Another suit pending.

IV. Insufficiency of form:

(a) Noncompliance with Eq. R. 20.

(b) Essential facts not alleged positively.

(c) Uncertainty.

(d) Plaintiff does not offer to do equity.
(e) Bill not signed by counsel.
(f) Bill not supported when required by affidavit.

No. 344.

Demurrer. (a)
(General Form.)

[Title of Court and Cause.]

Commencements:

The demurrer of XY, the defendant above named;

(or) The joint and several demurrer of VW & XY, the defendants (or two of the defendants) above-named.

(or) The joint demurrer of XY, and MY, his wife, the (or two of the) defendants above-named, to the bill of complaint of AB, the above-named plaintiff.

This defendant (or these defendants respectively), by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged (a), (b), (c), (when part only of bill is demurred to:)

(a) As to so much and such part of the bill as is contained in paragraph —— thereof.

(b) As to so much of the bill as in the fifth and sixth interrogatories seeks that, etc.

(c) As to so much of the said bill as seeks that this defendant may answer and set forth whether, etc., and as to so much of the prayer of the said bill as prays that, etc.

demurs thereto, and for cause of demurrer shows (state grounds of demurrer).

Conclusion:

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant (or these defendants, respectively), demurs thereto and humbly demands the judgment of this Court whether he shall be compelled to make any further or other answer (a) to the said bill;

(a) (or, to such part of the said bill as is so demurred to as aforesaid).

and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

(a) Eq. R. 31, 32, 34, 35, 36.

(b) Eq. R. 32.

No. 345.

Verification of Demurrer. (a)

District of———
County of——— } ss.

XY makes solemn oath and says that he is (a) the above named defendant,

(a)or the secretary of the above named defendant.

the XY R. Co., and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

Subscribed and sworn to before me this —— day of ——— 18——.

———

Notary public for ————.

(a) Eq. R. 31.

No. 346.

Certificate of Counsel. (a)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

———

Of counsel for defendant.

(a) Eq. R. 31.

No. 347.

Demurrer for Want of Equity.

The demurrer of XY, defendant to the bill of AB, plaintiff:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer showeth that the said plaintiff has not in and by the said bill made or stated any such cause as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant, wherefore, (Conclusion, see Form No. 344.)

Solicitor for Defendant.

(Verification, Form No. 345.)

(Certificate of counsel, Form No. 346.)

No. 348.

Demurrer for Want of Legal Power to Sue.

That the said plaintiff, who appears by his said bill to be an infant under the age of twenty-one years, has exhibited his said bill without any person being named therein as his next friend.

Wherefore, etc. (Conclusion, Form No. 344.)

No. 349.

Demurrer to the Substance of the Bill that Plaintiff Has no Interest.

That the said plaintiff has not shown by his said bill that he has any right or interest in the said bonds therein described which would entitle him to the relief thereby prayed.

Wherefore, etc. (Conclusion, Form No. 344.)

No. 350.

That Defendant is Answerable, if at all, to Some Other Person.

That it appears by the said plaintiff's said bill that there is no privity between said plaintiff and this defendant to enable the said plaintiff to call on this defendant for payment of any debt due to the estate of said testator from this defendant.

Wherefore, etc. (Conclusion, Form No. 344.)

No. 351.

That Defendant Has No Interest.

That the plaintiff has not in his said bill of interpleader shown any claim or right, title or interest whatsoever in this defendant in or to the said estate called A in the said bill, particularly mentioned or described, in respect whereof this defendant ought to be compelled to interplead with CD in the said bill named and the other defendant thereto.

Wherefore, etc. (Conclusion, Form No. 344.)

No 352.

Plaintiff not Entitled to Relief Prayed.

That the said plaintiff has not, as appears by his said bill, made out any title to the relief thereby prayed.

Wherefore, etc. (Conclusion, Form No. 344.)

No. 353.

Bill Does not Embrace Whole Matter.

That said plaintiff, by his said bill, in order to split the cause and create a multiplicity of suits, seeks only to recover part of an entire debt thereby

stated to be due to him from this defendant and in respect of other parts of said debt has, as appears by his said bill, filed two several other bills of complaint in this honorable Court against this defendant.

Wherefore, etc. (Conclusion, Form No. 344.)

No. 354.

For Want of Parties.

That there are not proper parties to the said bill, and that there is not and are not any person or persons, party or parties, to the said bill who represents or represent, or has or have a common interest with the persons or class of persons whose interests the said bill affects, and for whom relief is thereby prayed.

No. 355.

Or: That it appears by the said bill that a personal representative of MN, the testator therein named, resident within the jurisdiction of the Court, is a necessary party to the said bill, and yet that there is no personal representative of the said testator resident within the jurisdiction of the Court a party to the bill.

(Conclusion, Form No. 344.)

No. 356.

For Multifariousness.

That it appears by the said bill that the same is exhibited against the defendant, and the several other persons therein named as defendants thereto, for distinct matters and causes, in several whereof, as appears by the said bill, this defendant is not in

any manner interested or concerned, and that this bill is altogether multifarious.

(Conclusion, Form No. 344.)

No. 357.

On Ground of Statute of Frauds.

That it appears by the said bill that neither the promise or contract which is alleged by the said bill, and of which the plaintiff by the said bill seeks to have the benefit, nor any memorandum or note thereof, was ever reduced into writing or signed by this defendant or any person therunto authorized within the meaning of the statute (describe the State law governing) for the prevention of frauds.

Wherefore, etc. (Conclusion, Form No. 344.)

No. 358.

Demurrer to Bill of Interpleader.

[Title of Court and Cause.]

(Commencement.)

That, although the plaintiff's said bill is upon the face thereof a bill of interpleader, yet the plaintiff has not annexed to his said bill an affidavit that he doth not collude concerning such matters with any of the defendants thereto, which affidavit ought, according to the rules of this Court, as this defendant is advised, to have been made by said plaintiff and annexed to said bill; and for further cause of demurrer this defendant shows (a) that the said bill does not contain sufficient matter of equity whereupon this Court can ground any decree in favor of said plaintiff, or give the said plaintiff any relief against this defendant.

Or (b) That the said plaintiff has not in and by his said bill shown any claim, or right, title or interest whatsoever in this defendant, or in or to the said property in the said bill particularly mentioned and described, in respect whereof this defendant ought to be compelled to interplead with EF in the said bill named and the other defendant thereto.

(Conclusion, Form No. 344.)

No. 359.

Demurrer and Answer. (a)

[Title of Court and Cause.]

The joint and several demurrer of VW and XY to part, and the joint and several answer of the same defendants to the residue of the original bill of complaint of AB and CD, plaintiffs:

These defendants, to so much of the plaintiff's bill as prays that they may be decreed to transfer to the said plaintiffs as executors of MN, in the said bill mentioned, the ——— shares of stock in the said bill mentioned, and that the said defendant VW may be decreed to transfer to the said plaintiffs the ——— shares of like stock in the said bill mentioned, and to so much of the said bill as prays that an account may be decreed to be taken of all the dealings and transactions between these defendants and the said MN with respect or in relation to the said two amounts of stock and of all sums of money respectively received and paid by these defendants; and the said MN, respectively, or by any other person by their or any of their respective order, or for their or any of their use, and that these defendants should be decreed to pay what should be found due thereon so far as such dealings and transactions and sums of money or any of them relate to or concern the

said shares of stock, or any part thereof, and to so much of the said bill as prays further or other relief with respect or in relation to the said shares of stock, or any part thereof.

Do demur and for cause of demurrer show that the said plaintiffs have not made or stated such a case as entitles them in a Court of equity to the relief prayer for, or any part thereof, and these defendants humbly pray the judgment of the Court as to such parts of the bill as they have so demurred to as aforesaid.

And as to the residue of the said bill, that is to say, all the discovery and the rest of the relief by the said bill prayed, these defendants, for answer thereto, severally say, etc.

(a) Eq. R. 32.

No. 360.

Demurrer, Plea and Answer. (a)

[Title of Court and Cause.]

The demurrer, plea and answer of XY, the above named defendant, to the bill of complaint of the above named plaintiff:

First. The said defendant XY, by protestation, not confessing or acknowledging any of the matters and things in the said bill contained to be true in such manner and form as the same are therein set forth and alleged, as to so much of the said bill as seeks (state what), and also as to so much of the said bill as seeks (state what), demurs thereto,

And as to the discovery and relief sought by the said bill save so much thereof as relates to the premises therein mentioned to be situate at ————, said defendant, for cause of demurrer, shows that, etc.

And as to so much of the aforesaid discovery and relief as relates to the said premises as aforesaid, said defendant, for cause of demurrer, shows that, etc.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, said defendant prays the judgment of this honorable Court whether he shall be compelled to make any answer to such parts of the said bill as he has hereinbefore demurred to.

Second. And the said defendant, XY, not waiving his said several demurrers, but wholly relying thereon as to so much of the said bill as seeks (state what), and also as to so much of the said bill as seeks (state what), doth plead thereto and for plea says (set forth plea and averment).

All which last mentioned matters and things said defendant pleads in bar to so much of the said bill as is hereinbefore pleaded to, and humbly prays the judgment of this honorable Court whether he ought to make any further answer to so much of the said bill as is hereinbefore pleaded to.

Third. And the said defendant, XY, not waiving his said several demurrers and plea, but wholly relying and insisting thereon, for answer to so much of the said bill as he is advised it is material or necessary for him to answer, says as follows, etc.

Solicitor for Defendant.

(a) Eq. R. 32, 37.

No. 361.

Demurrer for Want of Jurisdiction.

[Title of Court and Cause.]

The demurrer of the above-named defendants, Thomas Cunningham, C. K. Bailey, E. F. Bailey, An-

drew Wolf, R. Gnekow, John Jackson, T. W. Newell, I. S. Bostwick, William Inglis, and Moses Marks, to the bill of complaint of the above-named plaintiff.

These defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, jointly demur to the said bill, and for causes of demurrer show:

I.

That enough does not appear upon the face of the bill to show the Court's jurisdiction of the suit, in consequence of the want of proper and necessary averment of citizenship of the parties.

II.

That it appeareth by the plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against these defendants or any of them.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, these defendants do demur thereto. And they pray the judgment of this Court whether they, or any of them, shall be compelled to make any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

DUDLEY & BUCK,
Solicitors and of Counsel for Defendants.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

Feby. 28, 1895.

GEORGE F. BUCK.
Of Counsel for the Defendants Who have Demurred.

No. 362.

Demurrer for Noncompliance with Rules of Court, etc.

[Title of Court and Cause.]

The demurrer of the Shoshone Mining Company to the original bill of complaint of Royal J. Rutter and F. W. Bradley, complainants.

This defendant, the Shoshone Mining Company, by protestation, not confessing or acknowledging all or any of the matters or things in said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, demurs to the said bill, and for cause of demurrer says:

I.

That a compliance has not been made in said bill with any of the requisites of rule 20 of the Equity Rules of this Court.

II.

That the defendant's residence or place of abode is not stated in said bill.

III.

That the said bill is deficient in certainty, in this: That it does not state under the laws of what State or under what laws the defendant is incorporated or has any legal existence.

IV.

That it appears upon the face of the bill that the plaintiffs have an adequate remedy at law.

V.

That the said plaintiffs have not in or by the said bill made or stated such a cause as doth or ought to entitle them to any such discovery or relief as is thereby sought or prayed for, from or against this defendant.

VI.

That the value of the subject matter of the plaintiff's action is beneath the dignity of the Court, in that it does not show by the bill that the matter in dispute exceeds, exclusive of interests and costs, the sum of two thousand dollars.

VII.

Because the said bill does not show on its face any diverse citizenship between the parties complainant and defendant.

VIII.

Because the bill does not show on its face that the action is one arising under the constitution or laws of the United States.

Wherefore, this defendant demands the judgment of this honorable Court whether it shall be compelled to make any further answer to the said bill or to any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf sustained.

Osburn, Idaho.

W. B. HEYBURN,
Solicitor and of Counsel for the Defendant, the Shoshone Mining Company.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

Osburn, Idaho, Nov., 1895.

W. B. HEYBURN,
Of Counsel for Defendant.

State of Idaho, County of Shoshone, } ss.
Northern District of Idaho. }

E. M. Gilpin, being first duly sworn, deposes and says: I am president of the Shoshone Mining Com-

pany, the above-named defendant. The foregoing demurrer is not interposed for delay.

E. M. GILPIN.

Subscribed and sworn to, etc.

No. 363.

Demurrer for Lack of Jurisdiction and Equity.

[Title of Court and Cause.]

To the Honorable Judges of the Circuit Court of the United States, for the District of Washington:

Demurrer of the above-named defendant, L. Edgar Diller, to the bill of complaint, of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill.

And for cause of demurrer shows:

I. That it appears by the plaintiffs' own showing by the said bill that he is not entitled to the relief prayed by said bill against this defendant.

II. That it appears from said bill of complaint of plaintiff that this Court has no jurisdiction to hear and determine this action.

III. That said bill of complaint of plaintiff is wholly without equity.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

F. S. GRIFFITH,

Solicitor and of Counsel for Defendant.

State of Washington, } ss.
County of King. }

F. S. Griffith, being first duly sworn, on oath says: That he is the solicitor for the defendant in the above-entitled action, that in his opinion the foregoing demurrer is well founded in point of law, and on behalf of the defendant says that the same is not interposed for delay, the defendant being without the United States.

F. S. GRIFFITH.

Subscribed and sworn to, etc.

No. 364.

Demurrer to Cross-Bill.

[Title of Court and Cause.]

The demurrer of the complainant to the cross-bill of Last Chance Mining Company.

The said complainant, The Tyler Mining Company, not confessing all or any of the matters in the said cross-bill of complaint of the said Last Chance Mining Company to be true as therein set forth, doth demur to said cross-bill, for that the same does not state such a case, nor contain any matter of equity entitling the said mining company to any relief against the defendant.

Wherefore, it prays judgment of the Court, whether it shall be compelled to further answer said cross-bill and it further prays to be dismissed therefrom with costs.

ALBERT ALLEN,
Solicitor for Complainant.

I, John R. McBride, of counsel for complainant, the Tyler Mining Company, and defendant to said cross-bill, do hereby certify that the foregoing demurrer

to the cross-bill of complaint is, in my opinion, well taken.

JOHN R. McBRIDE.

State of Oregon,)
County of Multnomah.) ss.

I, W. D. Wakefield, being first duly sworn according to law, depose that I am the president of the Tyler Mining Company, the complainant in this suit, and that the foregoing demurrer is not interposed for delay.

W. D. WAKEFIELD.

Subscribed and sworn to, etc.

No. 365.

Demurrer to Answer.

[Title of Court and Cause.]

The plaintiffs demur to the second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth paragraphs of the answer of the defendant filed in this cause, and for grounds of demurrer state the following:

I.

That the said paragraphs of said answer do not state facts sufficient to constitute any defense to the cause of action set forth in plaintiff's complaint filed in this cause.

II.

That the facts set forth in said paragraphs of said answer are insufficient in law to constitute any defense to plaintiff's cause of action.

Wherefore plaintiffs pray the judgment of this Court whether they shall make any other or further reply to said answer.

WM. H. BRINKER,
U. S. Attorney.

I, Wm. H. Brinker, United States Attorney for the District of Washington, and solicitor for plaintiffs in the above cause, do hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. H. BRINKER.

Subsection 4.

Pleas. (a)

No. 366.

General Form.

[Title of Court and Cause.]

(Commencement.)

The plea of XY, the defendant above-named,

(or) The joint and several plea of VW and XY, the defendants (or two of the defendants) above named,

(or) The joint plea of XY and MY, his wife, the (or two of the) defendants above-named,

to the bill of complaint of AB, the above-named plaintiff):

This defendant (or these defendants respectively), by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged (a) or (b) or (c):

(a) For plea to the whole of said bill.

(b) For plea to so much and such part of the said bill as prays (state what).

(c) For plea to so much and such part of the said bill as seeks discovery from this defendant whether (state what).

says that (plea follows).

Conclusion.

All of which matters and things this defendant doth (or these defendants do) aver to be true, and he pleads (or they plead) (here state the plea) to said plaintiff's bill (or to so much of the said bill as hereinbefore mentioned), and prays (or pray) the judgment of this honorable Court whether he (or they) should be compelled (or ought to be required) to make any other or further answer to the said bill (or to so much of the said bill as is hereinbefore pleaded to), and prays (or pray) to be hence dismissed with his (or their) costs and charges in that behalf most wrongfully sustained.

————,

Of Counsel for Defendant.

(a) Eq. R. 31, 36. As to pleas generally, see Foster's Fed. Pr., ch. IX.

No. 367.

Counsel's Certificate. (a)

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

————,

Of Counsel for Defendant.

(a) Eq. R. 31.

No. 368.

Verification. (a)

District of ————, }
County of ————. } ss.

XY, being duly sworn, deposes and says (a) he is one of the above-named defendants,

(b) Or the (secretary) of the above-named defendant, the XY R. Co.

The foregoing plea is true in point of fact and is not interposed for delay.

Subscribed and sworn to before me this —— day of ———.

———,

Notary Public for ———.

(a) Eq. R. 31.

No. 369.

Plea to Part, and Answer to Residue of Bill. (a)

The plea of XY, defendant (or one of the defendants), to part, and the answer of the same defendant to the residue, of the bill of complaint of AB, plaintiff (or the joint plea and answer, or the joint and several plea and answer, according to circumstances.)

This defendant, to all the relief sought by the said bill, and also to all the discovery thereby sought, except the discovery sought by or in respect of (so much of the said bill as prays that this defendant may answer and set forth, whether, etc. (here the language of the interrogatories which it is necessary to answer, must be introduced), pleads in bar, and for plea saith, etc. (here follows the plea.)

All which matters and things this defendant does aver to be true, and does plead the same in bar to the whole of the said bill, except such part of the discovery thereby sought as aforesaid; and this defendant humbly prays the judgment of this honorable Court, whether he ought to be compelled to make any further or other answer to so much of the said bill as is hereby pleaded to, and he prays to be hence dismissed with his costs.

And for answer to such parts of the said bill as are excepted, this defendant says, that, etc. (here the answer follows.)

————,
Counsel's Signature.

(a) Eq. R. 32.

No. 370.

Plea to the Jurisdiction. (a)

[Title and Commencement.]

The ———— Company, the above-named defendant, specially appearing under protest for the purpose of this plea and for no other, says that it is not a corporation organized under the laws of the State of ————, nor citizen nor inhabitant of the State of ————, nor does it reside therein, but that it is a corporation organized under the laws of the State of ————, and an inhabitant of said State of ————, and residing at ————, in the ——— district of ————, where its corporate meetings are held and its corporate business transacted.

Wherefore, insisting upon its exemption from suit in this Court, it says that not this Court but the ———— Court of the United States for the ——— district of ————, has jurisdiction in the premises.

THE ———— COMPANY,
By ————
President.

(a) Harrison v. Rowan, Peters C. C. 489; Teese v. Phelps, 1 McAll. 17; Commercial Bank v. Slocomb, 14 Peters, 60; Decker v. New York B. & P. Co., 11 Blatchf. 76; Desty's Fed. Proc. sec. 251; see, generally, Desty's Fed. Proc. sec. 2.

No. 371.

Plea of Infancy.

[Title and Commencement.]

That the said plaintiff, before and at the time of filing his said bill, in which he appears as the sole plaintiff, was and now is an infant under the age of twenty-one years; that is to say, of the age of ————, or thereabouts.

Therefore, etc. (Conclusion, Form 366.)

No. 372.

Plea that Plaintiff is not Administrator, as Alleged, of a Person Deceased.

[Title of Court and Cause.]

Commencement to. (a)

For plea to the matter in the said bill contained, and to so much thereof as sets forth that the said AB is the administrator of the estate of the said MN, and to so much thereof as relates to any contract of purchase between the said MN and these defendants, and seeks to have such contract rescinded and prays for relief in the premises, and that these defendants may be required to refund to the said AB all the money paid by MN upon the said purchase, and that the notes given in payment therefor may be given up to be cancelled, and that the plaintiff may be repaid all damages and expenses which the said MN may have suffered by reason of the premises—do hereunto plead and for plea say that the said AB is not administrator as in the bill mentioned, or the legal personal representative of said MN duly appointed and qualified to act as therein set forth. All which matters and things these defendants aver to be true and plead the same to so much of the bill as afore-

said, and pray judgment of this honorable Court whether they ought to be required to make any other or further answer thereunto.

No. 373.

Plea of Former Suit Pending.

[Title and Commencement.]

That at a term of the ———— Court which was held in the year ——, the said present plaintiff exhibited his bill of complaint in this honorable Court against this defendant and one ————, for an account of the moneys raised by the sale of the plantations and other estates in said plaintiff's present bill mentioned, and claiming such shares and proportions thereof and such rights and interests therein as he now claims by his present bill, and praying relief against this defendant in the same manner and for the same matters and to the same effect as the said plaintiff now prays by his present bill; and this defendant and the said ———— appeared and put in their answer to the said former bill, and the said plaintiff replied thereto, and witnesses were examined on both sides and their depositions duly published, and the said former bill and the said several proceedings in the said former cause, as this defendant avers, now remain depending and as of record in this honorable Court, the said cause being yet undetermined and undismissed, all which several matters and things this defendant doth aver, and pleads the said former bill, answer, and the several proceedings in the said former suit in bar to the said plaintiff's present bill, and humbly demands the judgment of this honorable Court whether he shall be put to make any further or other answer thereto, and prays to be hence dismissed, with his costs and charges in this behalf sustained.

No. 374.

Plea of Want of Proper Parties.

[Title and Commencement.]

That he is not the administrator of the estate of MN as in the said bill alleged, and that the administrator of the said MN is one GH, which said administrator ought to be made a party to the said bill, as this defendant is advised.

(Conclusion, Form No. 366.)

No. 375.

Plea of Account Stated.

[Title and Commencement.]

As to so much and such part of the said plaintiff's bill as seeks an account of and concerning the dealings and transactions therein alleged to have taken place between the said plaintiff and this defendant at any time before the ——day of ———, this defendant, for plea thereto, says that on the —— day of ———, which was previously to the said bill of complaint being filed, the said plaintiff and this defendant did make up, state and settle an account in writing, a counterpart whereof was then delivered to the said plaintiff, of all sums of money which this defendant had before that time, by the order and direction and for the use of the said plaintiff received, and of all matters and things thereunto relating or at any time before the said —— day of ——— being or depending between the said plaintiff and this defendant (and in respect whereof the said plaintiff's bill of complaint has since been filed) and the said plaintiff, after a strict examination of the said account and every item and particular thereof which this defendant avers, according to his best knowledge and belief, to

be true and just, did approve and allow the same and actually received from this defendant the sum of ———— dollars, the balance of the said account which by the said account appeared to be justly due to him from this defendant, and the said plaintiff thereupon and on the —— day of ——— gave to this defendant a receipt or acquittance for the same, under his hand, in full of all demands, which said receipt and acquittance is in the words and figures following, that is to say, (here set out the receipt verbatim), as by the said receipt or acquittance now in the possession of this defendant and ready to be produced to the honorable Court will appear.

Wherefore, etc.

(Conclusion, Form No. 366.)

No. 376.

Plea of Statute.

[Title of Court and Cause.]

(Commencement.)

As to so much of the bill as seeks an account and discovery of the estate and effects of MN, deceased, this defendant's testator, or that seeks a satisfaction for or in respect of any money received by the said MN for or on account of RS in the said bill named, or for or on account of the said plaintiff, or that seeks a discovery or satisfaction for any of the moneys, goods or effects of the said RS come to the hands of this defendant since the death of the said MN, this defendant pleads thereto and for plea says: That the said MN died in or about the year ——, and that the said RS, the defendant's testator, afterwards also died in the month of ———, 18—, and that the matters and effects pretended to have been received by

the said MN, or by this defendant, and the goods and commodities pretended to have been consigned (if any sums of money, goods or effects were received by the said MN or by this defendant, which this defendant does not admit), were received by the said MN or by this defendant above six years before this defendant was served with any process of this honorable Court to answer the said bill, or any process whatsoever was sued against this defendant to account for the same, and that, if the said plaintiff had any cause of action or suit against this defendant or against the said MN for or concerning any of the said matters, which this defendant does not admit, that such cause of action or suit did not accrue or arise within six years before the said bill was filed or this defendant was served with process, nor did this defendant nor his testator, at any time within six years before the said bill was exhibited or process sued out against this defendant, promise or agree to come to any account or to make satisfaction, or to pay any sum or sums of money for or by reason of any of the said matters. And that, by a certain act of ———— for the limitation of actions and suits at law, it was enacted (state the statute to be pleaded) and this defendant pleads the several matters aforesaid in bar to so much of the plaintiff's said demand as aforesaid and prays the judgment of this honorable Court thereon.

Subsection 5.

Answers.

No. 377.

General Forms.

[Title of Court and Cause.]

The answer of XY (a), the defendant,

(b) (or) one of the defendants,

or the joint and several answers of VW and XY (a) the defendants,

(b) or two of the defendants,

to the bill of complaint of AB, plaintiff.

(Another Form.)

The answer of XY, an infant under the age of twenty-one years, by GN, his guardian, defendant (or one of the defendants), to the bill of complaint of AB, plaintiff.

No. 378.

Introduction.

This defendant (or these defendants respectively), now and at all times hereafter saving to himself (or themselves) all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is (or these defendants are) advised it is material or necessary for him (or them) to make answer to, answering says (or severally answering say) (a) (b).

Addition where answer is by formal party who is a stranger to the facts.

(a) That he is a stranger to all and singular the matters and things in the said plaintiff's bill of com-

plaint contained, and therefore leaves the plaintiff to make such proof thereof as he shall be able to produce without this, that ————,

(or) Where answer is by an infant.

(b) This defendant, answering by his guardian, says that he is an infant of the age of ———— years or thereabouts, and he therefore submits his rights and interests in the matters in question in this cause to the protection of this honorable Court, without this, that ————.

No. 379.

Conclusion.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, there is any other matter, cause or thing in said complainant's said bill of complaint contained material or necessary for this defendant to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable Court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

No. 380.

Another Form.

Wherefore this defendant (or these defendants) having fully answered, confessed, traversed, and avoided or denied all the matters in the said bill of complaint material to be answered, according to his

(their) best knowledge and belief, humbly prays this honorable Court to enter its judgment (to enter its decree), that this defendant (or these defendants respectively) be hence dismissed, with his (their) reasonable costs and charges in this behalf most wrongfully sustained (and for such further and other relief in the premises as to this honorable Court may seem meet and in accordance with equity).

No. 381.

Averments. (a)

Accounts. Reference to Book.

The dealings and transactions in respect of the said trade are entered in a large book or ledger kept on the premises at ————, and the items in respect thereof are contained in one hundred and fifty pages, with double columns, of the said book, and to set out such items in detail would occasion very great expense, but these defendants are willing, if the Court should think proper so to direct, that the plaintiff or his solicitor should inspect the said book and take extracts therefrom at all reasonable times of the day.

(a) See Eq. R. 41, 59.

No. 382.

Accounts Refused as Being Useless Before Decree.

And these defendants, respectively, say and submit that it would only occasion great and useless expense were they in this, their answer, to set forth any further or fuller account of the rents and profits aforesaid, and that the same ought to be taken, if at all, by and under the directions and decree of this honorable Court.

No. 383.

Admission for Purposes of Suit.

These defendants have not, nor has either of them, any personal knowledge of the fact, but for the purposes of the suit they admit that, etc.

No. 384.

Claims Made by the Defendant.

(a) This defendant claims to be interested in the matters of this suit by virtue of, etc.

(b) The short particulars of the mortgage now vested in these defendants and of their title thereto are as follows, etc.

(c) These defendants claim a lien on the shares of ———— for so much of the said debt as arises from the unpaid purchase money of the same shares respectively.

No. 385.

Craving Leave for Greater Certainty.

These defendants respectively admit that, etc. (or believe that, etc.), but for greater certainty they crave leave to refer to the said etc.,————, when produced.

No. 386.

Craving Leave to Refer to Codefendant's Answer.

This defendant knows little or nothing respecting the deeds, dealings and transactions stated in the said amended bill, but he has seen a copy of the answer proposed to be put in to the amended bill by the defendants RS and TU, and has no doubt but that the statements contained in such answer are correct. However, for his greater certainty as to the contents

of deeds and other written documents, this defendant craves leave to refer to such deeds or documents. Under the circumstances hereinbefore stated, and to avoid expense and prolixity, this defendant abstains from answering categorically the interrogatories filed for the examination of the last-named defendants and himself in answer to the amended bill, but, if the plaintiffs so desire, this defendant is ready and willing to put in a full answer to the said amended bill.

No. 387.

Information and Belief.

(a) This defendant has been informed and believes that, etc.

(b) Believes that, etc.

(c) These defendants respectively have no reason to doubt and therefore they believe that, etc.

(d) These defendants respectively believe that the statements contained in the paragraphs numbered respectively 1 to 8, inclusive, of the plaintiff's bill of complaint, are true, except in the particulars or respect hereinafter mentioned, that is to say, etc.

(e) These defendants, ST, VW and XY, respectively, believe it to be true that, etc.

(f) These defendants, respectively, have no personal knowledge of the matters inquired after by the ———— interrogatory, filed in this case, but they have no reason to doubt and therefore believe that, etc.

No. 388.

Ignorance.

These defendants, respectively, do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that, etc.

No. 389.

Qualified Denial.

(a) Save as herein appears, it is not the fact that, etc.

(b) Save as herein (or by the said schedule) appears, this defendant does not know, etc.

No. 390.

Reference to Schedule.

This defendant has in the schedule hereto, and which he prays may be taken as part of this his answer, set forth, to the best of his knowledge, information and belief, a description of, etc.

No. 391.

Settled Account.

The account so stated and settled was in fact stated and settled by the said AB and this defendant, as it purports to be, on the day of the date thereof, and this defendant claims the benefit thereof as a settled account.

No. 392.

Vexatious Suit—Settled Accounts—Claim of Benefit of Defense as if Raised by Plea or Demurrer.

These defendants, respectively, submit to the judgment of this honorable Court and humbly insist that this suit is altogether unnecessary and vexatious, and that, even if the plaintiff had been entitled to any such relief as is prayed by the said bill, the same might have been obtained by proceedings at law, but they say that a large sum of money has been for a long time and now is justly due and owing to them from the plaintiff, and that

during the whole of the transactions in the said bill mentioned these defendants were in advance with creditors of the plaintiff, and that the plaintiff has repeatedly and partly in the letters hereinbefore set forth acknowledged the accuracy of the accounts rendered by these defendants to him, and has treated the same as being, as in fact they were, settled accounts, and these defendants claim the same benefit from this, their answer, as if they had pleaded the several matters herein stated, or any of them, or as if they had demurred to the said bill.

(a) Eq. R. 39.

No. 393.

Want of Interest in Plaintiff.

This defendant is advised and humbly submits that the plaintiff has not any interest in the estate of the said testator or in the matters in question in this suit, nor any such estate or interest in the said testator's estate or the matters aforesaid as to entitle the plaintiff to sustain this suit, and this defendant craves the same benefit from this defense as if he had demurred to the said bill.

No. 394.

Claim of Benefit of Same Defense to Amended Bill as to Original Bill. (a)

These defendants respectively submit that the plaintiff has not by his said amended bill entitled himself to any equitable relief as against them, and they accordingly claim the benefit of the same objections to the said amended bill which are made by their said answer to the said original bill.

(a) Eq. R. 46.

No. 395.

Answer Setting up the Statute of Limitations.

And these defendants, in addition to the foregoing answer, aver that the cause of action, if any there may be arising to the plaintiffs on account or by reason of the several allegations and complaints in their said bill contained, did not accrue within six years before the said bill was filed, and this allegation the defendants make in bar of the plaintiffs' bill and pray that they may have the same benefit therefrom as if they had formally pleaded the same.

No. 396.

Another Form.

The defendant claims the benefit of the provisions made in and by the (state the statute of limitations to be pleaded), respecting the limitation of actions and of all other statutes of limitation, in bar to the relief sought by the plaintiff in this suit in the like manner as if this defendant had pleaded the same.

No. 397.

Answer Setting up the Benefit of the Statute of Frauds, as if it had been Pleaded by the Defendant. (See note.)

That by a certain statute —— made and passed in the —— for the prevention of frauds and perjuries, and commonly called the Statute of Frauds, all contracts and agreements relating to lands, except as therein is excepted, are required to be reduced into writing, and signed by the party or parties to be bound thereby; and that the said agreement in the said bill mentioned, and therein alleged to have

been made, and entered into by this defendant and the said plaintiff, was not reduced into writing and executed pursuant to the said statute, and therefore this defendant insists that the same is void as against this defendant; and that he cannot be affected thereby, and this defendant claims the same benefit as if he had pleaded the same statute in this cause; and this defendant, for the reasons, and under the circumstances aforesaid, is advised, and insists, that the said plaintiff is not entitled to any relief against this defendant touching the matters complained of in the said bill.

Note.—If a defendant does not insist by his answer upon the benefit of the Statute of Frauds, he cannot avail himself of its provisions at the hearing, although he denies the agreement set up by the bill. Clifford v. Turrell, 1 Y. & Coll. C. C. 138; see also Baskett v. Cafe, 4 De G. & S. 388; [Merritt v. Brown, 6 C. E. Green, 401. And see, where the answer denies the agreement, Johns v. Norris, 7 C. E. Green, 109].

No. 398.

Another Form, Claiming the Benefit of the Statute of Frauds. (See Note, supra.)

This defendant says that no agreement in writing for purchase of the said premises or any part thereof, nor any memorandum, or note thereof in writing, has been made, entered into, or signed by him, or by any person thereunto by him lawfully authorized, and he claims the benefit of the statute passed for the prevention of frauds and perjuries, in the same manner as if he had pleaded or demurred to the plaintiff's bill.

No. 399.

Where a Defendant Objects to Answer Particular Interrogatories. (a)

As to the several interrogatories numbered 18, etc., and as to such of the other interrogatories [or, parts of interrogatories] (if any) as this defendant may not have answered, he is advised and humbly submits that he is not bound to answer the same, and he therefore declines to answer the said interrogatories [and parts of interrogatories]; and this defendant claims the same benefit of the objection as if he had demurred to the same or to the discovery sought thereby.

And this defendant also humbly submits that the plaintiffs are not entitled in this suit to the relief sought in and by the third, etc., paragraphs of the prayer of the supplemental bill, or for the purposes thereof to have any accounts, directions, or inquiries taken, given, or made; and he claims the same benefit of the objection as if he had demurred to the relief so sought.

(a) Eq. R. 44.

No. 400.

Statement in Answer to Prevent Plaintiff from Calling for the Production of Documents.

This defendant has now in his possession or power the several letters, papers, and writings relating to the matters in the bill mentioned, or some of them, and he has in the schedule hereto, which he prays may be taken as part of this his answer, set forth a list, or schedule of all the said letters, papers, and writings; but this defendant denies that thereby, or otherwise, if the same were produced, the truth of the matters in the said bill mentioned, or any of

them, would appear, further or otherwise, than as the same is hereinbefore admitted.

No. 401.

Answer and Disclaimer. (a)

[Title and commencement.]

This defendant has never received any part of the estate or effects of the testator or in anywise intermeddled therein, and he has never assented to, or in any manner accepted the said devise made to him by the said will jointly with the said ————, and he has never in any manner consented to become a trustee of the said will, or in any manner acted or interfered in the trusts thereof; and, in fact, this defendant has at all times refused to accept, and does now refuse to accept the office of trustee of the said will; and defendant has always disclaimed, and does hereby disclaim and renounce, the said devise made to him by the said will, and all and singular the estates and property which could or might pass under or by virtue thereof, and all estate and interest therein, and also the trusts of the said will, and the office or duty of executing the same.

(a) See Foster's Fed. Proc., sec. 155.

No. 402.

General Form of Disclaimer—Full Title of Cause. (a)

The answer and disclaimer of XY, the above-named defendant [or, one of the above-named defendants], to the bill of complaint of the above-named plaintiff.

Or, the joint and several answer and disclaimer of VW and XY, the [or, two of the] above-named de-

fendants, to the bill of complaint of the above-named plaintiff. In answer to the said bill, I, VW [or, we, VW and XY], say as follows:

"I [or, we], have not, and do not claim, and never had or claimed to have, any right or interest in any of the matters in question in this suit, and I [or, we] disclaim all right, title, and interest, legal and equitable, in any of the said matters; and I [or, we] say that if I [or, we] had been applied to by the plaintiff before the filing of his bill, I [or we] should have disclaimed all such right, title, and interest; and I [or, we] submit that the bill ought to be dismissed as against me [or, us] with costs.

————,
(Name of Counsel)."

[The disclaimer should be signed by counsel and by the defendant.]

(a) See Foster's Fed. Proc., sec. 155.

No. 403.

Answer in Suit to Enjoin Working of Mines.

[Title of Court and Cause.]

Now comes the Last Chance Mining Company, defendant in the above-entitled action, and answering the complaint of the plaintiff herein, says:

First.—That as to whether or not plaintiff is now, or at all times since the year 1886 has been, a corporation duly organized and existing under the laws of the State of Oregon, having its principal office and place of business at the city of Portland, in the State of Oregon, this defendant has not sufficient information on which to base a belief, and therefore denies the same.

Second.—That as to whether or not the plaintiff is now or ever was at any time the owner of, or entitled to the possession of, that certain lode mining claim known or called the Tyler Lode, situated in the Yreka Mining District, county of Shoshone, State of Idaho, described by metes and bounds as in the fourth paragraph in the plaintiff's complaint set forth, this defendant has not sufficient information upon which to base a belief, and therefore denies the same.

Third, fourth, and fifth.—Here follow denials as to the position of the lodes as alleged in the bill.

Sixth.—Defendant denies that on or about the first day of July, 1890, or at any other time, that it wrongfully or unlawfully entered into and upon any part or portion of any vein (etc., as described and alleged in bill), or that it ousted or ejected the plaintiff therefrom, or from any vein or lode, or that it wrongfully took or carried away therefrom or converted to its own use, large and valuable quantities, or any quantity, of ore in said vein contained, the property of plaintiff, of the value of $200,000, or of any value, or that it has at all times since, or at any time before or since, wrongfully withheld, or that it does now wrongfully withhold, from the plaintiff the possession of said portion of said vein, lode, or ledge so lying to the south of the south side line of the said pretended Tyler Mining Claim, between the plane drawn through the end lines of said claim as aforesaid, or that it wrongfully withholds from the plaintiff the possession of any vein, lode, ledge, ore bodies, or other property of any kind or character, to damage plaintiff in the sum of $200,000, or to the damage to plaintiff in any sum whatever.

Seventh.—Denies that the value of any vein, or any portion of any vein, lode, or ledge, wrongfully with-

held from the plaintiff by the defendant, exceeds the sum of $2,000, or any other sum.

Eighth.—Defendant alleges the truth to be that all the ores, minerals, and rock that have been extracted and carried away from the point in controversy by it, are and were a part of a ledge having its top or apex within the surface lines of the Last Chance Lode Mining Claim, the property of this defendant, which said ledge and ores belonged to, and were and are, the property of this defendant by virtue of the same being a part of the Last Chance Lode Mining Claim, located on the seventeenth day of September, 1885, by the grantors and predecessors in interest of this defendant, which said Last Chance Lode Mining Claim is now the property of this defendant, together with all ores, ledges, and veins having their outcrop and apex within the surface lines of the said Last Chance Lode Mining Claim.

Ninth.—Defendant denies that any of the ores, metals, minerals, rock, or earth which it has mined or removed from within the surface side lines of the said Last Chance Lode Mining Claim, extended downward vertically, were a part of or belonged to any vein, lode, or ledge having its top or apex outside of the surface lines of the Last Chance Mining Claim, the property of this defendant.

Tenth.—Denies that it has ever removed, extracted, mined, or carried away any ores, metals, minerals, rock, or earth from any ledge other than a ledge having its top or apex within the surface lines of the said Last Chance Lode Mining Claim.

Wherefore defendant prays that this action may be dismissed, and that defendant may go hence without day, and that it have and recover its costs and disbursements herein.

W. B. HEYBURN,
Attorney for Defendant.

(Verification.)

I hereby certify that the foregoing answer is, in my opinion, well founded in point of law.

Dated ———, 18——.

———,

Counsel for Defendant.

No. 404.

Answer and Cross-Complaint.

[Title of Court and Cause.]

The answer of the above-named defendant, the Last Chance Mining Company, to the bill of complaint of the above-named plaintiff.

In answer to said bill, the Last Chance Mining Company says as follows:

First. That as to whether or not the Tyler Mining Company, plaintiff in said suit, is a corporation organized and existing under the laws of the State of Oregon, or as to whether or not said Tyler Mining Company is a corporation organized and existing under any law, this defendant has not sufficient information on which to base a belief, and therefore denies the same, etc.

(Other denials follow.)

Twenty-seventh. Defendant denies that it combined and confederated with other corporations named, or with any person, or persons, or corporations, or that while combining and confederating with the other corporations named, and with the said other defendants, and by means of tunnels which enter the earth some 100 feet distant from the southeasterly end line of the Tyler ground or elsewhere, and which were not made with any apparent design to enter upon or driven into the direction of the alleged lode which crosses in the Tyler ground, and

which have not been so constructed as to secretly, underground, reach and strike the vein belonging to the complainant, it reached and struck the vein belonging to the complainant; and defendant alleges the fact to be that the tunnel referred to in complainant's complaint maintains an even course and direction for a distance of about 800 feet, until it strikes the ore bodies in its ground, a part of a ledge having its top and apex within the Last Chance Mining Claim.

(Other denials follow.)

Forty-eighth. Denies that the defendant is doing the acts complained of with a full knowledge of the truth as in the complaint stated; but alleges the truth to be that the statements in the said complaint in reference to the acts of defendant are untrue.

Forty-ninth. Denies that unless restrained and enjoined by the process of this Court, that the alleged damage will be committed, or that any act of defendant will be a damage to the complainant, or that any act of defendant will produce irreparable damage to the complainant.

Fiftieth. Wherefore, the defendant prays that plaintiff's bill may be dismissed, and that all orders heretofore made in the premises be vacated, and that the defendant have and recover its costs.

For cross-complaint and for affirmative relief, your orator shows to the Honorable Judges of the Circuit Court of the United States, in and for the District of Idaho:

First. That it is a corporation organized and existing under the laws of the State of Washington; that its name is the Last Chance Mining Company; that it comes into Court at the suit of the Tyler Mining Company against Charles Sweeney, Frank R. Moore, Kennedy J. Hanley, J. Quackenbush, Alexander Ross, John Pressly, Frank Hyatt, The Last

Chance Mining Company, a corporation, The Idaho Mining Company, a corporation, and Republican Mining Company, a corporation.

Second. That the said Sweeney, Moore, Hanley, Quackenbush, Ross, Pressly, and Hyatt have disclaimed any interest in the subject matter of the litigation, and have filed their disclaimer in this Court.

Third. That the Idaho Mining Company, a corporation, organized under the laws of the State of Washington, is the owner of the "Last Chance" Fraction Lode Mining Claim, and the "Skookum" Fraction Lode Mining Claim, and that said Last Chance Fraction and Skookum Fraction Lode Mining Claims lie to the westward of the claim of your orator, and in no way conflicting with it, and your orator claims no interest therein, and has no connection with or control over the said Idaho Mining Company or the property claimed by it.

Fourth. That the Republican Mining Company is a corporation organized under the laws of the State of Washington, and owns the Republican Fraction Lode Mining Claim, which lies to the northward of the Last Chance Lode Mining Claim, and your orator has no interest in or control over either the said Republican Mining Company or the property owned by it, and is not responsible for the acts and things done by said Republican Mining Company.

Fifth. That your orator, the Last Chance Mining Company, is now, and ever since, etc. (Here follow allegations of ownership and of adverse claims by the plaintiff in original suit.)

Twenty-sixth. Wherefore, your orator, to the end that it may obtain relief to which it is justly entitled in the premises, prays the Court to grant to it your writ of subpoena directed to the said Tyler Mining Company, requiring and commanding it to appear

herein and answer, not under oath, an answer under oath being hereby expressly waived, to the several allegations in this cross-bill contained.

Twenty-seventh. That it be required to set forth any and every adverse interest, claim, or demand in or to said lode or premises called the Last Chance Lode Mining Claim, to the end that said adverse interest, claim, or demand may be justly adjudicated and declared null and void as against the cross-complainant; and that the title and ownership of your orator in and to said Last Chance Lode Mining Claim be established and confirmed as against any and all claims of the said Tyler Mining Company, and all cloud thereon forever removed.

Twenty-eighth. That your Honors grant unto your orator your writ of injunction, commanding said Tyler Mining Company, its servants, employees, and workmen, and all persons claiming to act under its authority, direction, or control, to absolutely desist and refrain from entering into or upon any portion of the said Last Chance Lode Mining Claim, and from working on or in the said premises, or inside the surface lines thereof extended downward vertically, until such time as your Honors shall appoint and direct an order herein; and that said Tyler Mining Company, and all persons claiming to act by its authority or for or on its behalf, be restrained from the commission of any acts or things hereby sought to be enjoined, and that upon such hearing the writ herein prayed for, pending this suit, be made and confirmed until the final determination of this suit, and that thereupon said injunction may be made perpetual, and that upon a hearing of this suit and adjudication the cross-complainant be quieted and confirmed, and his title to the said Last Chance Lode Mining Claim throughout its entire extent, and to any

and all lodes having their top or apex within the surface lines of said Last Chance Lode Mining Claim; and that the Tyler Mining Company has taken the ores and minerals from the cross-complainant as alleged by its cross-bill in fraud of its rights, and for such other and further relief, preliminary and final, as to the Court may seem meet and proper, and which equity may require, and for costs of suit.

THE LAST CHANCE MINING COMPANY,
By Frank R. Moore, President.
Defendant and Cross-Complainant.

W. B. HEYBURN.
Solicitor for Defendant and Cross-Complainant.
(Verification, etc.)

No. 405.

Supplemental Answer.

[Title of Court and Cause.]

Now comes the above-named defendant, the Last Chance Mining Company, and by leave of Court first had and obtained, files this, its supplemental answer, to the complaint of the plaintiff filed herein, and alleges:

First. That since the commencement of the above-entitled action and the filing of the complaint therein, and since the filing of the answer of this defendant therein, this defendant has purchased from the government of the United States that certain quartz lode mining claim called the Last Chance, situated in Yreka Mining District, Shoshone county, Idaho, more particularly described as follows, to wit: . . . .

And has paid the government of the United States for said mining claim at the rate of five dollars ($5.00) per acre; and has obtained the receiver's receipt of the United States land office at Coeur d'Alene, Idaho,

for the land district in which said mining claim is situated, for the sum of money so paid for said mining claim.

Second. That by virtue of the said purchase and payment, and the holding of the said receipt of the receiver for the purchase price of the said mining claim, the defendant, the Last Chance Mining Company, is now the owner of the said Last Chance Mining Claim, so described as aforesaid in fee.

W. B. HEYBURN,
Attorney for Defendant.

(Verification, etc.)

Subsection 6.

Exceptions.

No. 406.

To Bill (or Answer) for Scandal. (a)

[Title of Court and Cause.]

Exceptions for scandal taken by the above-named defendant X Y to the bill of complaint of the above-named complainant, filed in this cause on the —— day of———.

First exception. For that the whole of the paragraph in the said bill (identify the paragraph) is scandalous.

Second exception. For that the passage commencing with the word "———" in the ——— line and ending with the words "———" in the ——— line of the ——— paragraph of said bill (identify the paragraph) is scandalous.

In all which particulars this exceptant excepts to said bill as scandalous and humbly insists that the

said scandalous matter ought to be expunged therefrom.

_____,

(Counsel's name.)

Note.—By appropriate changes the above form can be adapted to exception to answer.

(a) Eq. R. 27.

No. 407.

Exceptions to Answer. (a)

[Title of Court and Cause.]

Exceptions taken by the said complainant to the separate answer of the defendant, the Last Chance Mining Company, to complainant's bill of complaint.

1st. For that said defendant, the Last Chance Mining Company, has not to the best of its knowledge, information, recollection, and belief answered the allegations of complainant that it is a corporation duly organized and existing as stated in the complaint.

2d. For that the pretended denials of the matters alleged in the bill of complaint, and found in paragraphs numbered 4, 5, 6, 7, 8, 9, and 10, are not made upon the best knowledge, remembrance, information, and belief of said defendants, and for that it doth appear from other parts of said answer that said pretended denials contained in said paragraphs are evasive, sham, and insufficient.

3d. For that the allegations of complainant's bill in paragraph numbered II, in the answer of the said defendant to the said complainant's bill, is not full or explicit, and is evasive, specious, and insufficient.

4th. For that the matters in the complainant's bill alleged, to which paragraph numbered 12 of defendant's answer is interposed, is not made upon its best information remembrance, belief, and knowledge, but

is sham, disingenuous, evasive, and untrue as appears from other parts of said answer, and is insufficient.

5th. That paragraphs 13 and 14 of defendant's answer filed herein, to the matters to which the same are addressed are insufficient, sham, and evasive, and are not made upon its best knowledge, information, remembrance, and belief.

That the denials contained and purported to be made by said defendant in paragraphs 13 and 14 of said answer to the complainant's bill of complaint are sham, irrelevant, insufficient, and appear from other portions of said answer to be untrue.

6th. That paragraph 15, or so much thereof as is contained in the following denial, towit: "Defendant denies, etc," is sham, insufficient, and not made upon complainant's knowledge, information, recollection, or belief, and is untrue, as shown by other portions of said answer, and is therefore insufficient.

11th. For that the allegation contained in paragraph numbered 20 of said answer is impertinent, irrelevant, and immaterial, and contains no defense to the complainant's allegations on the same matter, and is insufficient.

13th. For that the defendant's denial contained in paragraph 24 of this answer to complainant's bill of complaint is impertinent, a mere conclusion of law, is not made upon defendant's best knowledge, information, and belief, and is irrelevant and insufficient.

16th. That the paragraphs numbered 29 and 30 of the defendant's answer to plaintiff's bill of complaint are sham, untrue, insufficient, not being upon the best knowledge, information, and belief of defendant, but being evasions of the charges made in said bill upon the subject matter, and are therefore insufficient.

17th. That defendant's denials 31 and 32 are

neither the substance of the allegations of the complaint, nor are they direct, positive, nor upon its best knowledge, information, or belief. They do not show how much ore or other minerals it has taken from the ground in dispute, nor how much it has sold or converted, or had or used from the same, and are therefore insufficient.

18th. That denial 33 is insufficient, because it is evasive of the issue made in the complainant's bill, and does not deny the substance of the allegations, and is inconsistent with the allegations of the answer that the complainants are not owners thereof, and is therefore insufficient.

19th. That paragraphs 35, 36, 37, and 38 are each and all of them inconsistent with other admissions and allegations of the said answer, and are but mere evasions of the allegations of the bill of complaint, and do not deny them in substance according to the best knowledge, information, and belief of defendant, and are therefore insufficient as a defense.

Wherefore, the complainant comes, and in all particulars aforesaid excepts to the answer of the said defendant, on the grounds alleged, that the same is evasive, imperfect, insufficient, irrelevant, and impertinent; and humbly prays that the said defendant may be compelled to put a full, complete, and sufficient answer thereto, and have such other relief in the premises as to the Court may seem proper.

ALBERT ALLEN,
Solicitor for Complainant.

JOHN R. McBRIDE, Of Counsel.

(a) Eq. R. 61, 63, 64, 65.

No. 408.

Replication to Answer. (a)

[Title of Court and Cause.]

This replicant, A B, saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, X Y, for replication thereunto saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

_____,

Solicitors for complainant.

(a) Eq. R. 66.

Subsection 7.

Motions and Notices.

No. 409.

General Form of Notice of Motion. (a)

[Title of Court and Cause.]

Take notice that this honorable Court will be moved, for and on behalf of the plaintiff, on the ——

day of ———, instant [or next], that (state terms of motion).

Dated this —— day of ———.

A B,
Plaintiff's Solicitor.

To Mr. C D,

Defendant's Solicitor.

(a) As to motions generally, see Eq. R. 4, 5, and 6.

Motions.

Directed to Bill of Complaint.

No. 410.

To Amend Bill. (a)

[Title of Court and Cause.]

Commencement:

Comes now the plaintiff above named, and moves the Court that he may be at liberty to amend his said bill, as shall be advised, without costs, amending the defendants', etc., copies.

(a) Eq. R. 29.

No. 411.

(or) By Adding Defendant. (a)

he may have leave to amend his bill by adding the said E F, a defendant thereto, with apt words to charge him.

(a) Eq. R. 47.

No. 412.

(or) To File An Amended Bill.

he may have leave to file the amended bill hereto attached.

No. 413.

By Party Late an Infant, on Coming of Age, to Dismiss Bill with Costs, Before Decree.

[Title and address.]

Comes now the plaintiff, above named, late an infant, but now of full age, and shows to this honorable Court:

1. That this plaintiff when an infant, by C D, his next friend, filed his bill in this cause against the defendants, to which they appeared; but no decree has yet been made therein.

2. That this plaintiff has now attained the age of twenty-one years; and is not desirous to proceed any further in the said cause.

Wherefore this plaintiff now moves the Court that his said bill may stand dismissed out of Court; with costs to be paid by him to the said C D and to the defendants.

No. 414.

For a Plaintiff to Dismiss His Bill with Costs. (a)

[Title, etc.]

Comes now, the above-named A B, complainant, and shows the Court that having exhibited his bill in this honorable Court against the above-named defendant who has appeared [and put in his answer] thereto, this complainant is now advised to dismiss his said bill.

This complainant therefore humbly prays, that the said bill may stand dismissed out of this Court, with costs to be taxed by the proper taxing-master [or, by the clerk of this Court].

(a) Daniell's Ch. Prac., 5th Am. ed., 790.

Motion Directed to Demurrer or Plea.

No. 415.

To Withdraw a Plea or Demurrer. (a)

[Title, etc.]

Comes now the defendant XY and shows the Court that the plaintiff having exhibited his bill in this honorable Court against this defendant, this defendant put in his plea [or demurrer] thereto, since which he is advised to make other defense to the said bill. This defendant therefore moves the Court that he may be at liberty to withdraw his plea [or demurrer] upon payment of costs.

And, etc.

(a) Daniell's Ch. Pr., 5th Am. ed., pp. 595-6.

Motions Directed to Answer.

No. 416.

Motion to Amend Answer. (a)

[Title of Court and Cause.]

Now comes VW, the intervening and answering defendant herein, and moves the Court for leave to amend, by interlineation, his answer filed herein on November 4, 1892, as follows:

I. By striking out the words and figures, etc., in line — and — pages — and inserting instead thereof the words and figures following, etc.

(a) Eq. R. 60.

No. 417.

For Leave to Amend an Answer by Consent. (a)

[Title, etc.]

Now comes the defendant, XY, and shows to the Court:

First. The plaintiff lately filed his bill in this cause, against this defendant, who appeared thereto,

and on the —— of ———, 18——, filed his answer to the said bill.

Second. This defendant has since discovered the mistakes hereinafter mentioned in his said answer, and desires to correct the same.

And, therefore, moves the Court for leave by consent of the plaintiff to amend his said answer in the respects following; namely [state the proposed amendments].

(a) Eq. R. 60.

No. 418.

For Leave to File Supplemental Answer, by Consent. (a)

[Title, etc.]

Now comes the defendant XY and shows to the Court:

First.—The plaintiff lately filed his bill in this cause, against this defendant, who appeared thereto, and on the —— of ———, 18——, filed his answer to the said bill.

Second.—This defendant has since discovered certain mistakes in his said answer, and desires to explain and correct the same by a supplemental answer.

This defendant therefore moves the Court that by consent of the plaintiff, he may be at liberty on or before the —— of ———, 18——, to file a supplemental answer to the plaintiff's bill, for the purpose of [state what, e. g., correcting statements inadvertently made in his answer filed on the —— of ———, 18——, that he had not sold an artificial exhaust elsewhere than at his mill at W.; and as to the number of millstones to which such machinery has been applied].

(a) Eq. R. 46.

No. 419.

Notice of Hearing of Exceptions to Answer. (a)

[Title of Court and Cause.]

To the above-named respondent, and to Messrs. M & N, its solicitors.

You will each please take notice that the exceptions of the above-named complainants to the answer of the respondent in the above-entitled action will be called up for hearing and determination in the above-named Court before the Hon. ————, Judge of said Court, at the rooms in which said Court is held in the ————, in the city of ————, in the State of ————, on the —— day of ———, A. D. 18——, at the hour of ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard.

Dated November 19, 1894.

————,

Solicitors for complainant.

(a) Eq. R. 63.

Motions Relating to the Decree.

No. 420.

To Enter a Decree Nunc Pro Tunc.

[Title of Court and Cause.]

Comes now the ———— above named and moves the Court:

That the decree [or order] made in this cause, bearing date, etc., has been drawn up, but the time for entering the same, according to the rules of this Court, being elapsed,

This, ————, therefore, moves the Court that the said decree [or, order] may be entered nunc pro tunc.

No. 421.

Special Motion to Rectify a Decree or Order.

[Title of Court and Cause.]

Comes now the ———— and shows to the Court:

First.—That by the decree [or, by an order] made in this cause by [as the case may be], dated the —— day of ———, 18——, it was decreed [etc. Set out so much of the decree or order as is material to the subject matter of the motion].

Second.—That the said decree [or, order] has been duly entered in, etc.

Third.—That since such entry was made, this ——— —— has discovered that the said decree [or, order] omits to [state omission required to be rectified].

This ————, therefore, moves the Court that the said decree [or, order] may be rectified or corrected by [state in what respect]; or that the Court [or, as may be] will please to make such other order in the premises as to the Court [or, as may be] shall seem meet.

No. 422.

Motion for Rehearing. (a)

[Title of Court and Cause.]

The defendant in the above-entitled cause now moves the Court for a rehearing therein on the following grounds:

That the evidence shows that there was no discovery made upon the "Kirby" location prior to the making of said location, and that it is essential that this should appear affirmatively in the findings of the Court in the record.

II.

That the testimony shows that the southwest corner stake of the "Kirby" was drawn in officially, and that from the time of the drawing in of said corner stake the "Kirby" owners made no claim to the ground lying beyond that boundary so established, which facts should appear affirmatively in the findings of the Court and in the record.

III.

Because the testimony shows that the "Edith" location was perfected prior to the location of the "Kirby," and covered the same ground, which facts should appear distinctly in the findings of the Court and in the record.

IV.

Because the record shows that the defendant's claim was based upon a discovery of mineral-bearing rock in place, deep under the surface, which facts should distinctly appear in the findings of fact by the Court and in the record.

V.

Because the testimony shows that the Shoshone Mining Claim was located upon vacant and unoccupied public mineral land of the United States.

VI.

Because the testimony shows that the ledge as claimed by the Shoshone Mining Company does not belong to any other person, and is the property of the Shoshone Mining Company.

VII.

Because the testimony shows that the Shoshone Mining Company is entitled to a patent for the ground in controversy.

VIII.

That any judgment or decree or findings made by the Court in the premises should be accompanied by the testimony or a statement of the testimony adduced before the Court at the trial.

W. B. HEYBURN,
Counsel for Defendant.

(a) Eq. R. 88.

No. 423.

Notice of Motion for Judgment. (a)

[Title of Court and Cause.]

To the above-named plaintiffs and Messrs. M & N, their solicitors:

Notice is hereby given you that the mandate from the United States Circuit Court of Appeals of the ——— Circuit, holding terms at ————, was filed and entered in the above Circuit Court, at ————.

And on ———, 18—, the counsel for the defendant filed in said cause a formal motion for judgment, a copy of which said motion marked Exhibit "A," and made part of this notice is herewith served upon you.

And you are further notified that said motion will be called up, and final judgment asked in said cause, on ———, the —— day of ———, 18—, according to said mandate, at which time said motion will be heard or as soon thereafter as counsel can be heard by the Court.

————,
Solicitors for Defendant.

(a) Desty's Fed. Proc., sec. 213.

No. 424.

Motion for Judgment. (a)

[Title of Court and Cause.]

Now comes the defendant, XY, and shows to the Honorable Court that the above cause was commenced in this Court, tried and judgment entered against defendant.

That the defendant appealed said cause to the Circuit Court of Appeals of the ——— Circuit, where the judgment of the trial Court was reversed, and said Court of Appeals in its opinion filed, says: "Judgment reversed, and cause remanded for further proceedings not inconsistent with this opinion."

That on the —— day of ———, 18——, mandate issued, and by order of this Court, on motion, said mandate was filed and entered of record in said cause, ——— ——, 18——.

Defendant now moves the Court for final judgment upon the facts found by the honorable trial Judge, and the law as laid down in said opinion of the honorable Circuit Court of Appeals, and for such other or further proceedings as may be necessary, that justice may be done the parties.

———,

Solicitors for Defendant, XY.

(a) Desty's Fed. Proc., sec. 213.

Subsection 8.

Orders and Decrees.

No. 425.

Decree on Bill to Quiet Title. (a)

[Title of Court and Cause.]

This cause came on to be heard at this term upon the bill, the answer of the defendant, XY, as last amended, the replication of complainant and the proofs in the case, and was argued by counsel.

And it appearing that the bill in equity in the above-entitled cause was filed in this Court on the fourth day of June, 1894, and that a subpoena was issued and duly served on the defendants, RS and VW; that no appearance has been entered on the part of said defendants on demurrer, or plea, or answer filed, and that an order taking the said bill pro confesso against said defendants was duly entered on the twenty-second day of March, 1895, in the order book, and that no proceedings have been had or taken by said defendants since said order was entered, and more than thirty days having elapsed since the entering of said order taking said bill pro confesso as aforesaid:

Now, therefore, upon consideration of the said bill, the answer thereto of the defendant, XY, as last amended, the replication of complainant and the said proofs, and by reason of the default of said defendants, RS and VW, it is by the Court upon consideration thereof.

Ordered, adjudged and decreed as follows, to wit:

That the said defendants have not, nor has any of them, any estate, right, title or interest whatever in or to that certain mining claim, lands and prem-

ises in the said bill of complaint and in the answer of the defendant, XY, as last amended and hereinafter particularly described; that the title of complainant thereto is good and valid; and that the said defendants and each of them be, and they and each of them are, forever enjoined and restrained from asserting any claim whatsoever in or to said mining claim, lands and premises adverse to said complainant.

Said mining claim, lands and premises are described as follows, to wit: . . . .

It is further ordered, adjudged, and decreed that said complainant have and recover from the defendants jointly his cost of suit incurred by said defendants jointly, taxed at —— dollars, and that said complainant have and recover against said defendants severally his costs of suit incurred by said defendants severally, taxed as follows: Against the defendant RS, —— dollars against the defendant VW, —— dollars, and against the defendant, XY, —— dollars.

Dated ————.

————,
Circuit Judge.

(a) Eq. R. 19; Desty's Fed. Proc., sec. 243.

No. 426.

Foreclosure of Mortgage at Hearing; Mortgagor in Possession. (a)

The Court doth order and decree, that it be referred to MN, Esquire, master, etc., to compute what is due to the plaintiff, for principal and interest on his mortgage in the pleadings mentioned and for his costs of this cause, and upon the defendant's paying

to the plaintiff what shall be reported due to him for principal, interest, and costs as aforesaid, within —— months after the said master shall have made his report, at such time and place as said master shall appoint, it is ordered, that the said plaintiff do reconvey the mortgaged premises free and clear of all encumbrances done by him, or any claiming by, from, or under him, and deliver up upon oath all deeds and writings in his custody or power relating thereto, to the defendant, or to whom he shall appoint. But in default of the said defendant's paying to the plaintiff such principal, interest, and costs as aforesaid, by the time aforesaid, it is ordered and decreed that the said defendant from thenceforth do stand absolutely debarred and foreclosed of and from all [right, title, interest, and] equity of redemption of, in, and to the mortgaged premises.

(a) Desty's Fed. Proc., sec. 88; Eq. R. 92.

No. 427.

Directions for Sale in Decree on Suit by Trustees for Bondholders for Foreclosure and Sale of Railway Property.

Third.—And it is further ordered, adjudged and decreed that in default of such payment by said railway company, or by some one in its behalf, all of said mortgaged property hereinafter more specifically described, and all of the right, title, interest and equity of redemption of said railway company in and to the said property described in said mortgage or deed of trust, or which has since the date thereof been acquired by it, or the said receivers, or either of them, or which may hereafter be acquired prior to the sale herein provided, shall be sold by or under the direction of Eben Smith, Esq., special master in

chancery of this Court, as an entirety and as one property, and not in separate parcels, and in the manner hereinafter directed, to satisfy the amounts due, and to become due as aforesaid, for principal and interest on said outstanding bonds and the several sums herein allowed and decreed to be paid, or so much thereof as such property will bring upon such sale, and that said Eben Smith, master aforesaid, make such sale in accordance with the course and practice of this Court, and that at such sale the said complainant, or the committee of the mortgage bondholders of said Seattle, Lake Shore & Eastern Railway Company, composed of Morton S. Paton, H. O. Armour, E. D. Christian, and J. D. Smith, referred to in the master's report filed herein, or any of the holders of said outstanding bonds, may become the purchaser or purchasers at such sale; that all of the property ordered to be sold under this decree shall be sold at public sale to the highest bidder upon the premises of said defendant to be sold, to wit: (place of sale named); that the notice of such sale shall be given by said master by advertisement thereof once each week for four successive weeks preceding the date of sale, in the Seattle "Post-Intelligencer," a daily newspaper of general circulation published in said city of Seattle, and that such notice shall contain a statement of the time and place of sale, the terms and conditions thereof, as herein prescribed, and a description briefly describing the mortgaged property to be sold.

Fourth.—And it is further ordered, adjudged, and decreed that the purchaser or purchasers of said mortgaged property at such sale shall be entitled, except as hereinafter provided, to use and apply in making payment of the purchase price any of the outstanding bonds secured by said mortgage as afore-

said, etc. (then follow directions for certain part to be paid in cash to provide for costs, etc.)

Fifth.—And it is further ordered, adjudged and decreed that the master return the cash proceeds of said sale into the registry of this Court, and that the same be disbursed by the clerk of this Court as hereinafter directed.

Sixth.—And it is further ordered, adjudged, and decreed that out of the purchase money received by the said master in chancery from said sale, and paid into the registry of this Court, upon the completion and confirmation by this Court of the sale made under and in pursuance of this decree the clerk of this Court shall pay out of such moneys in the registry the following:

(Here follow directions for payment of costs and trustee's compensation, etc., under six heads.)

Seventh.—And it is further ordered, adjudged and decreed that if at such sale the said mortgaged property shall be sold for cash only, the said master after the confirmation of such sale shall deposit the entire purchase money in the registry of this Court, the clerk of this Court shall pay in full all the amounts hereinbefore allowed and decreed to be paid, excepting to the holders of said unproven outstanding bonds, and that the residue of said purchase price shall be, by the clerk of this Court, paid to the holders of said other bonds pro rata, etc. And in case the amount of the proceeds of such sale shall be more than sufficient, after payment of all costs and expenses, and all other allowances of every kind and description made by this decree, to pay the entire amount herein adjudged to be due and payable on all of said outstanding bonds and interest on the matured coupons computed up to the date of sale, the overplus, if any, shall be paid to the said

Seattle, Lake Shore & Eastern Railway Company, its successors and assigns.

Eighth.—And it is further ordered, adjudged and decreed, that if the moneys arising from said sale shall be insufficient to pay the said costs and expenses and fees, and all allowances made by this decree, and the amounts due upon all of said bonds and coupons, with interest computed up to the date of said sale, then and in such case the said Eben Smith, master as aforesaid, shall specify the amount of such deficiency in his report of said sale, and that upon the coming in and confirmation of said report, the said defendant, the said Seattle, Lake Shore & Eastern Railway Company, which is personally liable for the payment of the debt secured by the said mortgage, and due to complainant as aforesaid, shall pay to said complainant the amount of such deficiency, with interest thereon, and said complainant shall have execution therefor. And the clerk of this Court is hereby directed, on the receipt of any of the purchase money applicable for distribution to the holders of outstanding bonds, as hereinbefore provided, to notify said holders of said outstanding bonds to present their said bonds and coupons for payment of the respective amounts to be paid thereon by said clerk, at some place to be designated in the said notice, by publication daily for ten successive days in the said Seattle "Post-Intelligencer."

Ninth.—And it is further ordered, adjudged and decreed that upon the completion and confirmation of any sale made under and in pursuance of this decree, the said Eben Smith, master in chancery as aforesaid, shall make, execute and deliver to the purchaser or purchasers of said property a good and sufficient deed of conveyance in fee simple, which

deed shall specify the property so purchased and sold and the sum paid therefor, and that the said defendant, by its proper corporate officers join in the execution of said deed.

Tenth.—And it is further ordered, adjudged and decreed that the defendant, and all persons claiming by, through, or under it, since the commencement of this suit, be forever barred and foreclosed from all equity of redemption and claim of, in and to the said mortgaged premises or property, or any part thereof, unless all the amounts adjudged to be due by this decree and payable by said defendant, are paid in accordance with the provisions of this decree upon the said sale. And at the time of the execution of said deed the said Thomas R. Brown and John H. Bryant, as receivers, shall also make, execute and deliver a good and sufficient deed of conveyance of any and all property of the said railway company, or any interest therein, vested or standing in the name of the said receivers, or either of them, or to which said receivers, or either of them, have acquired any right, title or interest.

Eleventh.—And it is further ordered, adjudged and decreed that upon the execution and delivery of the conveyance or conveyances as aforesaid, the said purchaser or purchasers, his or their representatives or assigns, be let into the possession of all of the said mortgaged premises or property so conveyed to him or them, and that any of the parties to this cause, their agents, officers and employees, who may be in possession of the said mortgaged premises or property, or any part of the same, and any person who has since the commencement of this suit come into the possession of the same, or any part of the same, on the production of the said deed or deeds of conveyance as above provided and a certified copy

of the order of this Court confirming the said sale and conveyance, shall surrender possession thereof, to such purchaser or purchasers, their representatives and assigns, and on refusal so to do will be considered in contempt of this Court.

Twelfth.—And it is further ordered and directed that the said Eben Smith, master in chancery as aforesaid, make report of his acts and doings under this decree, with all convenient speed after said sale shall have taken place.

The mortgaged premises and property by this decree directed to be sold are described as follows, to wit (here follows a description of the mortgaged property).

The Court hereby expressly reserves for further consideration all matters not herein expressly provided for.

Dated this —— day of ———, A. D. 1895.

C. H. HANFORD,
Judge.

No. 428.

Decree for Account of Dealings and Transactions. (a)

[Title of Court and Cause.]

The Court doth order and decree that it be referred, etc., to take an account of all partnership dealings and transactions between the plaintiff and the defendant (from the —— day of ———); and that what, upon taking the said accounts, shall appear to be due from either of the said parties to the other of them, be (within one month from the date of the master's report) paid by the party from whom, to the party to whom, the same shall be certified to be due.

(a) Eq. R. 74.

No. 429.

Decree for Dissolution from Time of Notice; Partnership Assets; Accounts; Inquiry as to most Beneficial Mode of Sale, and if as a Going Concern or as Wound up Sale.

[Title of Court and Cause.]

This Court doth "declare, that the partnership in the pleadings of their causes mentioned, called the ——— Co., is to be deemed dissolved as from the —— day of ———, the date of the notice of dissolution given by Messrs. ———, as the solicitors and on behalf of the defendants VW and XY, as in the pleadings mentioned [or, as from the —— day of ———, the date of the filing of the plaintiff's bill in this cause; and doth order and decree the same accordingly]; and the Court doth further declare, that the (describe property), are, in equity, assets of the said partnership firm; and the Court doth order and decree that it be referred, etc., to take and make the following account and inquiry; that is to say: 1. An account of the parnership dealings between, etc., all severally deceased, and the plaintiff and defendants respectively, since and including in such account or dealings with the partnership assets, property, and estates, since the date of the dissolution; 2. An inquiry, of what the partnership estates, property, and effects now consist, and in what manner, and upon what terms and conditions the same may be sold most beneficially for all parties interested therein; and whether as a going concern, or as one finally wound up; and it is ordered that the said partnership estate, property, and effects be sold with the approbation of the master [or, Court, or, Judge] in such manner, and upon

such terms and conditions as shall appear to be most beneficial for the parties interested therein."

(a) Desty's Fed. Proc., sec. 243; Eq. R. 74.

No. 430.

Decree for Specific Performance on Bill by Vendor to Enforce Contract for Sale.

[Title of Court and Cause.]

The Court doth declare, that the agreement in the plaintiff's bill mentioned, dated, etc., ought to be specifically performed and carried into execution; and decree the same accordingly. And it is ordered, that it be referred to AB, one of the masters, etc., to compute interest at the rate $—— per cent per annum, on the sum of $——, the (residue of the) purchase-money for the estate comprised in the said agreement, from the —— day of ———, when the same ought to have been paid according to the terms of the said agreement. And the said master is to take an account of the rents and profits of the said estate received by the plaintiffs or any of them, or by any other person, etc., since the —— day of ———, (if costs are given—and tax the plaintiffs, their costs of this suit.) And it is ordered that what shall be coming, on the said account of rents and profits, be deducted from the amount (of the residue) of the said purchase money, and interest (and costs) when so computed (and taxed) as aforesaid. And upon the plaintiffs' executing a proper conveyance of the said estate to the defendant (at the expense of the defendant according to the said agreement), or to whom he shall appoint, such conveyance to be settled by the said master [or, the Court] in case the parties differ, it is ordered that the defendant pay to the plaintiffs the

balance which shall be found to remain due to them in respect of such purchase money, and interest (and costs), after such deduction as aforesaid.

No. 431.

On Bill by Purchaser.

(Declaration and accounts as in form above.) And upon the plaintiff paying to the defendant the balance which shall be found due to him in respect of such purchase money (and) interest (and costs), after such deduction as aforesaid, it is ordered that the defendant execute a proper conveyance of the said estate to the plaintiff, etc.

No. 432.

Decree for Surrender of Mortgaged Premises on Payment of Amount Found Due on the Mortgage; in Default of Payment, Bill Dismissed, and Redemption barred. (a)

[Title of Court and Cause.]

This case coming on for a hearing upon the master's report, thereupon and in consideration thereof, it is ordered, adjudged, and decreed, that if said AB, the plaintiff above named, shall, within — days from the —— day of ———, A. D. 18——, pay or cause to be paid to said defendant the sum of —— dollars, with interest thereon, from this —— day of ———, A. D. 18——, to the day of payment, together with the defendant's costs of his suit taxed at ———.

Thereupon said defendants shall surrender said mortgaged premises unto the said AB, free of and discharged from said mortgage and all encumbrances created or made by them. But in default of the payment of said sums of ———— dollars, with interest

thereon, and of ——— dollars costs of suit, on or before the said time of payment as aforesaid, it is ordered and decreed that said bill shall stand dismissed out of this Court, and that no person claiming from or under said plaintiff shall have any further claim or right to redeem said premises from the force and effect of said mortgage, set forth in the plaintiff's bill.

(a) See Form No. 335, ante, and notes.

No. 433.

Decree, Among other Things, Declaring an Instrument in Writing a Mortgage, Subject to Redemption.

"And this Court doth further declare that the instrument in writing, bearing date the —— day of ———, 18——, signed by said AB, and delivered to said CD, was a mortgage, under and by virtue of which said CD and his assignees with notice held the same as mortgagees, and subject to the right of said AB or his assignee to redeem the same in equity."

No. 434.

Final Decree after Appeal.

At a stated term, etc.

Present: The Honorable, etc.

[Title of Cause.]

This cause having been tried before this Court and an interlocutory decree entered in favor of complainants, on the —— day of ———, 18——, from which decree an appeal was duly allowed and prosecuted in the United States Circuit Court of Appeals for

the ——— Judicial Circuit, from which a mandate has been duly issued to this Court reversing the said decree of this Court, and ordering that the bill of complaint herein be dismissed:

Thereupon, upon consideration thereof, it is ordered, adjudged, and decreed that the complainants' bill of complaint herein be, and the same hereby is, dismissed, and that respondent recover his costs herein taxed at ————.

Dated ——— —th, 18—.

————,
Judge.

No. 435.

Chattels—Redemption of Goods Pledged; Overpayment; Assignee. (a)

It is ordered and decreed that it be referred to AB, Esquire, master, etc., to take an account of what remained due on the, etc., the date of the last note exhibited in this cause, for principal and interest of the money advanced and lent by the defendant W. to the said C., the bankrupt, on the pledge of the jewels, plate, and effects mentioned in the original note from the defendant to the said C., dated, etc., and to compute the interest on so much of the principal as then remained due. And it is further ordered that the said master do likewise take an account of the said jewels, plate, and effects, specified in the last-mentioned note, and see which of them remain in specie in the custody or power of the defendant, and what part thereof hath been sold or disposed of by the defendant. And as to such part thereof as hath been so sold or disposed of, it is further ordered that the said master do take an account of the real value thereof; and that the value of such part thereof as hath been so sold or disposed of by the defendant be applied in the first place toward paying the interest, and then

toward sinking the principal, of what shall be so found to have been due to the defendant for the money lent or advanced by him as aforesaid. And if upon the balance of the said account, anything shall be found to remain due to the defendant for principal or interest, then on payment thereof by the plaintiff to the said defendant at such time and place as the said master shall appoint, it is further ordered that the defendant do deliver to the plaintiff such part of the said jewels, plate, and effects as shall be found to remain in specie. But in default of such payment by the plaintiff to the defendant as aforesaid, it is further ordered that the said plaintiff's bill do from thenceforth stand dismissed out of this Court with costs to be taxed by the said master. And in case it shall appear on the said account that the defendant is overpaid his said principal and interest, then it is further ordered that the said defendant do pay to the plaintiff so much as shall remain due to the plaintiff on the said account, and also to deliver to the plaintiff such part of the said jewels, plate, and effects as shall remain in specie, to be applied as part of the personal estate of the bankrupt, for the benefit of the creditors seeking relief under, etc.

(a) See Form No. 336, ante; Eq. R. No. 74.

No. 436.

On Bill of Interpleader—Action Stayed as to Policy Money; Inquiry, Who Entitled. (a)

(By consent.) Plaintiff to be at liberty to retain the sum of $———— for his costs of the action at law in the bill mentioned, and of this cause out of the sum of $————, the amount due upon the policy

in the bill mentioned. And it is ordered that the plaintiff M., on or before, etc., pay the sum of $————, being the residue of the said sum of $————, after such retainer, into Court; injunction to stay the defendant T. from prosecuting the action at law commenced by her against the plaintiff, and to stay her and the other defendants from commencing or prosecuting any other action against the plaintiff or the insurance company in respect of any money due on the policy. And it is ordered that all further proceedings in this cause be stayed as regards the plaintiff; and as between the defendants that an inquiry be made who is entitled to the said sum of $————.

(a) See Form No. 339, ante, and notes.

No. 437.

Revivor and Supplement—Order to Revive. (a)

Upon motion, etc., by counsel for the plaintiff, who alleged [state the last material proceeding in the suit, and the subsequent events in concise form], this Court doth order that this suit, which has become abated in manner aforesaid, stand revived, and be in the same plight and condition as the same was in at the time of the said abatement.

(a) See Form No. 341, ante, and notes.

No. 438.

For Inspection of Documents out of Court (with Leave to Seal up). (a)

It is ordered that the plaintiff, his solicitors and agents, be at liberty at all seasonable times, upon giving reasonable notice, to inspect at the office of

———— [usually the defendant's solicitors], situate at ————, the several documents mentioned in the answer of the defendant A, filed the —— day of ————, and in the schedule thereto, and admitted to be in his possession or power, and to take copies and abstracts thereof, and extracts therefrom, as he shall be advised, at his expense [but previously to the said inspection, the said defendant is to be at liberty to seal up such parts of the said documents as according to an affidavit to be made by him do not relate to the matters in question in this cause]; and it is ordered that the said defendant produce the said documents upon any examination of witnesses in this cause, and at the hearing thereof, as the plaintiff shall require.

(a) Foster's Fed. Proc., 2d ed., sec. 268, p. 464; Rev. Stats. U. S., sec. 724; Desty's Fed. Poc., sec. 244.

Subsection 9.

Interlocutory Orders.

No. 439.

Rule Taking Bill Pro Confesso as to Certain Respondents. (a)

[Title of Court and Cause.]

It appearing that the subpoena issued in this cause was duly and regularly served upon Jacob Bertz on the twenty-sixth day of June, 1894, by delivering to and leaving with Mary Jane Toehy, an adult person who is a resident in the family of Jacob Bertz, one of the defendants named therein, at the county of San Francisco, in said District, an attested copy of said sub-

poena, and that said subpoena was duly and regularly served on the twenty-second day of June, 1894, on Humphrey Lawrence, one of the defendants herein, by delivering to and leaving with said Humphrey Lawrence, at San Francisco, within said District, an attested copy thereof, and that said subpoena was personally served on J. F. Turner and George L. Brown, defendants in said action, on the sixteenth day of June, 1894, by delivering to and leaving with said J. F. Turner and George L. Brown, each on said day, in San Francisco, within said District, an attested copy of said subpoena, and it appearing that said service was made on each of said defendants, Jacob Bertz, Humphrey Lawrence, J. F. Turner, and George L. Brown, more than twenty days before the return day of said writ, and it further appearing that said defendants, and each of them, have not appeared in this suit, either in person or by solicitor, and that none of said defendants named have appeared in this suit at all: Now, therefore, on motion of Reddy, Campbell & Metson, solicitors for complainant, it is ordered that the bill of complaint in said cause be taken pro confesso as to said defendants named in accordance with the rules in such cases made and provided.

REDDY, CAMPBELL & METSON,
Solicitors for Complainant.

(a) Eq. R. 19.

No. 440.

Order of Substitution. (a)

[Title of Court and Cause.]

On this —— day of ———, A. D. 1896, came on for hearing at Chambers the application of plaintiff in above action, for an order substituting as plaintiff

MN. It appearing to the Court that MN has acquired by purchase the rights of plaintiffs in and to the property described in the complaint, and it further appearing that all rights of said plaintiffs have been transferred to said MN, and that said MN is the necessary and proper party plaintiff—

It is, therefore, ordered that said MN be, and he is hereby, substituted as plaintiff in the above action. It is further ordered [upon application of said plaintiff that a bond on appeal may be given in said cause by MN, the substituted plaintiff in said action, with the same force and effect as though given by the original plaintiffs, and] that all proceedings hereafter be in the name of said MN, as plaintiff. (It is further ordered that the amount of bond on appeal being for costs be, and the same is hereby, fixed at the sum of one thousand dollars, and that the same be given in the usual form.]

————,

Judge.

Parts in brackets specially ordered

(a) Daniell's Ch. Prac., 5 Am. ed., pp. 404-407; Eq. R. 28-29.

No. 441.

Order for Leave to File Supplemental Bill. (a)

[Title of Court and Cause.]

This cause coming on to be heard this —— day of ————, 1895, upon the petition of complainant for leave to file an amended and supplemental bill herein, and the defendant, CD, appearing and consenting thereto; and it appearing to the Court that XY is a necessary party to this cause:

It is ordered that the complainant have leave to file its amended and supplemental bill herein as prayed in said petition.

Dated ———, 18—.

———,
Judge.

(a) Eq. R. 57.

No. 442.

Order Granting Leave to File Amendment to Bill. (a)

[Title of Court and Cause.]

It is hereby ordered by the Court that leave be, and the same is, hereby given to said complainant, ———, to file an amendment to its bill of complaint in the above-entitled action attached to motion for such leave.

Dated ——— —, 1894.

———,
Judge.

(a) Eq. R. 29.

No. 443.

Order Sustaining Exceptions to Answer. (a)

[Title of Court and Cause.]

Now, on this day, this cause comes on to be heard upon plaintiff's exception to the answer on file herein, and the Court, after hearing the argument of respective counsel, and being sufficiently advised in the premises, sustains said exception, and the defendant is given to the ———, 18—, rule day in which to plead, to which ruling of the Court defendant excepts and its exception is allowed.

(a) Eq. R. 61, 63, 64.

No. 444.

Order Allowing Amendment of Answer. (a)

[Title of Court and Cause.]

Now, at this day, on motion of ————, of counsel for ————, the defendant, it is ordered that said ———— be, and he is hereby, allowed to amend his answer to the petition of ————, filed herein, and that the clerk of this Court make such interlineations in accordance with the written motion of said defendant herein filed.

(a) Eq. R. 60.

No. 445.

Order of Dismissal.

[Title of Court and Cause.]

This cause came on for final hearing and was argued by counsel, and the Court, upon due consideration of the pleadings and the evidence, and the arguments of counsel, doth now

Order, adjudge and decree that this suit be, and the same is, hereby dismissed.

Dated ——— ——, 1896.

————,

Judge.

No. 446.

Order Denying Petition for Rehearing. (a)

[Title of Court and Cause.]

Complainant's appeal from the ruling of the clerk disallowing cost-bill herein, and also the order to show cause why respondent's petition for rehearing herein should not be granted, came on this day to be heard, ————, Esq., appearing for complainant,

and ————, Esq., appearing for respondent, and said matters were argued and submitted to the Court, whereupon it was ordered that the ruling of the clerk upon the cost-bill appealed from herein, be and hereby is reversed, and that the respondent's petition for a rehearing herein be, and hereby is, denied, and the order to show cause discharged.

————,
Judge.

(a) Eq. R. 88.

No. 447.

Order Directing Filing and Transmission of Record.

[Title of Court and Cause.]

Now, on this —— day of ———, 1896, the foregoing transcript of the stenographer's notes of the remarks of the presiding Judge, in giving the decision of the Court upon the issues raised by the petition of the intervenor, AB, and the answers thereto filed by the complainant and the defendant, respectively, having been revised and corrected so as to state truly the opinion of the Court, it is

Ordered by the Court, that the same be filed nunc pro tunc, as of the date on which the cause was heard and the decision actually given, to wit, ———-——, 1895; and it is further

Ordered by the Court that the clerk transmit a copy thereof to the clerk of the Circuit Court of Appeals for the Ninth Circuit, as part of the record in this cause now pending in said Court of Appeals.

————,
Judge.

No. 448.

Order for Entry of Mandate and Decree.

At a stated term, etc.

Present: The Honorable, etc.

[Title of Cause.]

Upon motion of F. J., Esq., counsel for respondent, ordered that the mandate of the United States Circuit Court of Appeals for the ———— Circuit herein, be filed and spread upon the minutes of this Court; and it is further ordered upon motion of the said F. J., Esq., that a decree be filed and entered herein dismissing complainant's bill with costs.

Subsection 10.

Ne Exeat.

No. 449.

Affidavit to Obtain a Ne Exeat. (a)

[In Equity.]

[Title of Cause.]

State of ————,
County of ————, } ss.

I, WBR, one of the above-named plaintiffs, being duly sworn, depose and say that the above defendant is actually and justly indebted to the said plaintiffs in the sum of $———, for [here state the ground and circumstances of indebtedness]; for the recovery of which the said plaintiffs did, on the —— day of ———, file their bill of complaint in the office of ————, for the said county of ————,

against the said defendant; to which said bill the said defendant has not yet answered; and, being so indebted, the said defendant has lately declared in the presence of each of the plaintiffs, and informed them, and this deponent verily believes, that he will without delay leave this State and go to live and reside in parts without the United States, out of the jurisdiction of this Court. And this deponent has no doubt, but verily believes, that if the said defendant should be allowed to depart out of this State, the plaintiffs' debt will either be entirely lost to them, or the recovery thereof greatly endangered.

Sworn, etc.

W. B. R.

(Certificate of allowance.)

(a) Desty's Fed. Proc., sec. 237.

No. 450.

Order for Writ of Ne Exeat Regno. (a)

[Title of Court and Cause.]

Upon motion, etc., and upon reading an affidavit of, etc., filed, etc. [enter evidence, and if before appearance, and the clerk's certificate of the filing of the plaintiff's bill in this cause on the ——day of ———]; and the plaintiff by his counsel undertaking, etc. [as to damages], this Court doth order, that a writ [or, one more writ or writs] of ne exeat regno do issue against the said defendant A, until this Court make another order to the contrary; and the said writ [or, writs] is [or, are] to be marked for security in the sum of $——— in words, at length, and not in figures.

(a) Desty's Fed. Proc., sec. 237.

No. 451.

General Form of the Writ. (a)

The United States of America, }
District of ————. } ss.

The President of the United States of America, to the Marshal of the ———— District of ————, Greeting:

Whereas it is represented to us in our Circuit Court of the United States for the ———— District of ————, on the part of AB, plaintiff, against CD, defendant, amongst other things that he, the said defendant, is greatly indebted to the said plaintiff, and designs quickly to go into parts without the United States, as by oath made in that behalf appears, which tends to the great prejudice and damage of the said plaintiff, therefore, in order to prevent this injustice, we do hereby command you, that you do, without delay, cause the said CD personally to come before you, and give sufficient bail or security, in the sum of $———— (amount mentioned in the order for the writ), that he, the said CD, will not go or attempt to go, into parts without the United States, without leave of our said Court; and in case the said CD shall refuse to give such bail or security, then you are to commit him, the said CD, to our next prison; there to be kept in safe custody until he shall do it of his own accord. And when you shall have taken such security, you are forthwith to make and return a certificate thereof to our said Court of ———— ————, distinctly and plainly under your seal, together with this writ.

Witness————. at————, the —— day of ————, in the year 18——.

(a) Desty's Fed. Proc., sec. 237.

Subsection 11.

Restraining Orders and Injunctions.

No. 452.

Restraining Order. (a)

[Title of Court and Cause.]

Whereas, in the above-named cause it has been made to appear upon the bill of the complainant filed herein, and the exhibits annexed thereto, and the affidavits of X and Y and others, duly certified copies of which have this day been produced to the Circuit Justice of the Court, that a writ of injunction preliminary to the final hearing is proper, and that prima facie the complainant is entitled thereto, enjoining the defendants herein from the acts complained of and threatened to be committed.

Now, on motion of the said complainant, it is ordered that the defendants appear before the Circuit Court of the United States for the District of ———, in the ——— Circuit, at the courtroom of said Court, at ———, upon the —— day of ———, 1891, at 10 o'clock A. M. of said day, and then and there show cause, if any they have, why the preliminary injunction therein prayed for should not issue, and it appearing to the undersigned Circuit Justice of the ——— Circuit that there is danger of irreparable injury being caused to the complainant before the hearing of said application for the preliminary writ of injunction can be heard, unless the said defendants are, pending such hearing, restrained as hereinafter set forth:

Therefore, complainant's application for such restraining order is granted upon its giving a bond with two good and sufficient sureties, to be approved by the clerk of this Court, in the penal sum of $———,

securing the said defendants against all loss or damages which may result from the issue of said order, if it should be finally determined that the same was improperly issued, or that may be awarded to them by reason of the granting of said order.

Now, therefore, it is ordered that you, the said [name the parties to be restrained] defendants herein, your agents, servants and attorneys, and all persons acting by or under your authority or direction, be, and you are hereby, specially restrained and enjoined from [state the acts to be enjoined], until the further order of this Court; and it is ordered that, as to any and all ores, etc., you desist and refrain from removing or appropriating the same, but that you permit the same to be and remain therein until otherwise ordered by the Court.

This order is granted in the absence from said District of ———— ,of the U. S. District Judge thereof, and of the Judge of the ———— Circuit.

It is further ordered that a copy of this order, certified under the hand of the clerk and seal of this Court, be served on each of the defendants, to be restrained thereby.

Dated at ————, in the ———— District of ————, this —— day of ———, 1891.

————,

Circuit Justice of the Ninth Circuit.

(a) Desty's Fed. Proc., sec. 238.

No. 453.

Bond on Restraining Order. (a)

[Title of Court and Cause.]

Know all men by these presents, that we, A B, as principal, and H B and G A, of the District aforesaid, and householders therein, as sureties, parties of the

first part, are held and firmly bound unto the said CD, etc., defendants in the above-entitled action, parties of the second part, in the just and full sum of ———— dollars, for the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, and each of our successors, heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this —— day of ———, in the year of our Lord one thousand eight hundred and ninety-one, upon conditions as follows:

Whereas, the said AB has commenced its certain suit against the above-named parties, defendant in the Circuit Court of the United States, in and for the District of ————, and therein prayed for an injunction against the defendants, pending the trial of said suit, and also prayed for a restraining order therein upon said defendants, preliminary to the hearing of said application for injunction; and whereas, the Honorable Stephen J. Field, Associate Justice of the Supreme Court of the United States, in the absence of the Judge of said Circuit Court of said District, has granted said prayer for said restraining order, upon condition that the said complainant shall cause to be executed a good and sufficient bond to the defendants for the sum of ———— dollars, to secure them against all costs and damages, which may be awarded to them in case said order shall be finally determined to have been improperly granted:

Now, therefore, if the said A B shall well and truly pay the said defendants all costs and damages which may be awarded to them, in case said Court shall finally determine that said order was improperly granted not exceeding the said sum of———— dollars, then this obligation to be null and void; otherwise to be and remain in full force and effect.

Witness our hands and seals this——day of——, A. D. 1891.

Justification.

District of Idaho — ss.

H. B. and G. A., being first duly sworn according to law, deposes each for himself, states as follows: I am the same person whose name is subscribed to the foregoing bond as the surety therein, and I state that I am worth the sum specified as a penalty thereof, over and above all my just debts and liabilities, exclusive of property which is exempt from execution.

Subscribed and sworn to before me this —— day of ———, 1891.

———,

Clerk U. S. Circuit Court for Idaho.

(a) Desty's Fed. Proc., sec. 238.

No. 454.

Order Modifying and Continuing Restraining Order.

(a)

[Title of Court and Cause.]

In the above-entitled action a temporary restraining order having been issued restraining the defendant LMC from mining, extracting, or disposing of any of the ore from certain premises lying under the surface limits of the Last Chance Mining Claim, with the view of extending to the parties in this action full opportunity of careful examination of the disputed premises, and prepare their evidence for the trial of the cause, to have the workings and operations of the mine continued, and preserve the proceeds of the ore extracted to the party finally entitled thereto:

It is ordered that such restraining order be con-

tinued against said defendant LMC as a temporary injunction pending the trial of the cause, or until otherwise ordered by the Court or Judge, with the following conditions and modifications, to wit (here state modifications).

That nothing in this order shall operate to dispossess either party of the works made by them respectively, or of which they were severally in the possession when the restraining orders were granted in this action.

That at any time the parties affected by this order may agree upon modification hereof, they may act upon such modification without procuring the formal order of the Court approving the same, but no such modification shall be acted upon until the same shall be reduced to writing and signed by their respective counsel of record; also it is ordered that a copy of any such modifying agreement must be transmitted to and filed by the clerk of this Court.

It is further ordered that the restraining order heretofore issued against the complainant in this action be so modified that the complainant may [state what].

_____,
Judge.

(a) Desty's Fed. Proc., sec. 238.

No. 455.

Motion for Removal of Restraining Order. (a)

[Title of Court and Cause.]

Now comes the L. M. C., one of the defendants in the above-entitled action, and moves the Court that the temporary injunction and restraining order heretofore granted in said cause be vacated and set aside, and that all moneys deposited and under the control

of this Court, by reason of the granting of said injunction and the making of the order of the Court in connection therewith, be released from the control of this Court, and ordered paid over to the L. M. C.

This motion is based upon the records, evidence, and proceedings of this Court in case No. —— at law, and upon all the papers in the above-entitled cause.

————,

Solicitors for defendant.

Notice of Motion.

[Title of Court and Cause.]

To ————, solicitors for plaintiff.

You will please take notice of the filing of an application to the above-entitled Court for the release and discharge of the temporary injunction and restraining order heretofore granted in the above-entitled cause, and for the release of all moneys in the hands and under the control of the Court, by reason of the making of said orders.

————,

Solicitors for defendant.

(a) Eq. R. 55.

No. 456.

Injunction on Notice, or ex parte, on Undertaking. (a)

[Title of Court and Cause.]

Upon motion, etc., by counsel for the plaintiff, and upon hearing counsel for the defendant [or reading an affidavit of notice of his motion to the defendant, or if moved ex parte before the defendant has appeared to the bill, the clerk's certificate of the filing of the plaintiff's bill in this cause on the —— day of

———]. [Enter affidavit in suppport and in opposition, if any; and if ex parte, add, and the plaintiff by his counsel, undertaking to abide by any order this Court may make as to damages, in case this Court should hereafter be of opinion that the defendant shall have sustained any, by reason of this order, which the plaintiff ought to pay]. This Court doth order that an injunction be awarded to restrain the defendant XY, his servants, workmen, and agents from, etc., until the hearing of this cause, or until the further order of this Court.

(a) Desty's Fed. Proc., secs. 236, 239, 243; Eq. R. 55; see R. S. U. S., secs. 718, 719, 720; Foster's Fed. Proc., sec. 230.

No. 457.

Order for Inquiry as to Damages. (a)

[Title of Court and Cause.]

Upon motion for a decree, etc.—"This Court doth declare that the plaintiff is not entitled to any relief claimed by his said bill against the defendants, or any of them; and upon the plaintiff's undertaking contained in the order, dated, etc., to pay any sum which this Court might direct by way of damages to the said defendants, by reason of the sale of the book in the said bill mentioned, called, etc., having been stopped, pursuant to the undertaking given, by the said defendants to that effect, on the —— day of ———, it is ordered that it be referred to, etc., to inquire and report what damages have been sustained by the defendants by reason of the sale of the said book having been so stopped; and that the plaintiff N., within one month from the date of the master's report, to be made pursuant to this order, pay the amount which shall be thereby found due (for

damages in respect of the matters aforesaid) to the defendants R. and W., etc." And thereupon recognizance entered into to answer damages to be vacated; and all furtner proceedings to be stayed. Plaintiff to pay defendants' costs of suit and of motion for injunction.

(a) Foster's Fed. Proc., sec. 237; Russell v. Farley, 105 U. S. 433; Lea v. Deakin, 13 Fed. Rep. 514.

No. 458.

Injunction. (a)

[Title of Court and Cause.]

In this cause, it appearing to the Court in the action at law, to which reference is made in the complaint in this case, a verdict has been rendered, judgment rendered thereon for the plaintiff and against the defendant the L. M. C. for the possession and recovery of the vein of ore described in the complaint. it is therefore ordered that the said defendants, their agents, servants, officers, and employees, are enjoined and restrained from in any manner extracting any ore, doing any work upon such vein, or from selling or disposing of any ore extracted therefrom until the further order of the Court.

_____,

Judge.

(a) Desty's Fed. Proc., secs. 226, 239-243; Eq. R. 55.

No. 459.

Undertaking on Injunction. (a)

[Title of Court and Cause.]

Whereas, the above-named plaintiff has commenced an action in the Circuit Court of the United States,

———— Circuit, District of ————, against the above-named defendants, and is about to apply for an injunction against the said defendants enjoining and restraining them and each of them from the commission of certain acts, as in the complaint filed in said action in the manner particularly set forth and described; and whereas, the Hon. ————, judge of the Court above named, has on the —— day of ———, 1896, made an order directing the defendants in the above-entitled action to appear at the court-room of said Court in ————, State of ————, on the —— day of ———, 1896, at the hour of one o'clock, P. M., of said day, then and there to show cause if any they have, why they should not be so enjoined, and ordering that in the mean time and until further ordered by the Court, the defendants shall desist from any action or proceedings whatever under the writs now in the hands of the defendant, ————, U. S. marshal, or under the judgments described in the complaint. Now, therefore, we, the undersigned residents of the county of ————, State of ————, in consideration of the premises and of the said order, do jointly and severally undertake in the sum of ———— dollars, and promise to the effect that in case it shall finally be determined that plaintiff is not entitled to the relief granted by the said order, then the plaintiff will pay the defendants, and each of them, any and all damages which may be awarded to them, and to each of them, by reason of the said order and by reason of any action taken by plaintiff in the premises not exceeding the said sum of ———— dollars.

Dated this —— day of ———, 1896.

(a) See Foster's Fed. Proc., sec. 237; Russell v. Farley, 105 U. S. 433.

No. 460.

Notice of Motion to Dissolve Injunctions. (a)

[Title of Court and Cause.]

To John R. McBride and Arthur Brown, Esq., counsel for plaintiff.

You will please take notice that on Thursday, the sixteenth day of May, 1895, at 2 o'clock, P. M., on said day, the defendant, the L. M. C., will move the Court to dissolve the injunctions heretofore granted against the said L. M. C. Said motion will be based on the papers, filings, and proceedings had in this cause, and also the papers, filings, and proceedings had in that certain action at law brought in said Court by the complainants in this action against the said L. M. C. and others; also upon the decision and judgment of the United States Supreme Court in said last-named action.

W. B. HEYBURN,
Counsel for L. M. C.

(a) Eq. R. 55.

No. 461.

Petition to Dismiss Injunction. (a)

[Title of Court and Cause.]

The respondent, the L. M. C., respectfully shows:

That on the —— day of ———, 1891, a restraining order was issued out of this Court, enjoining and restraining the above-named respondents from working, operating, and mining within the ground in controversy between the complainant and respondents in this action, and that on ———, 1891, a bond in the sum of ———— dollars was filed by the complainant upon the granting of the said restraining order.

That on ———, 1892, the respondent, L. M. C., filed a motion in this Court to vacate the said restraining order, and on the —— day of ———, 1892, this Court granted the said motion to vacate the restraining order so far as it applied to the L. M. C. Claim.

That from the said —— day of ———, 1892, up to the —— day of ———, 1893, the said complainant had no restraining order or injunction against the defendant, the L. M. C. so far as the L. M. C. Claim is concerned.

That on the said —— day of ———, 1893, this Court made an order granting a restraining order against the said L. M. C., restraining it from working, mining, or extracting ore within the L. M. C. Claim.

That the bond given by the complainant upon the granting of the injunction aforesaid on the —— day of ———, 1891, became inoperative and void after the dissolution of said injunction on the —— day of ———, 1892, and is not operative or effectual as to the injunction granted by this Court on the —— day of ———, 1893.

That the complainant has never given any bond in support of said injunction so granted on the —— day of ———, 1893.

Your petitioner, therefore, prays that said injunction so granted on the —— day of ———, 1893, shall be dismissed for the failure on the part of the complainant to give the bond as ordered by the said Court.

———,
Counsel for the L. M. C.

(a) Eq. R. 55.

No. 462.

Notice of Petition to Dismiss Injunction.

[Title of Court and Cause.]

To ————, Esq., counsel for complainant in the above-entitled cause:

Please take notice that the respondent, the L. M. C., will present a petition, a copy of which is hereto attached, to the ————, judge of the above-entitled Court at ————, in ———— county, ————, on ———, the —— day of ———, 1895, at 10 o'clock, A. M., on said day, or as soon thereafter as counsel can be heard.

————,

Counsel for respondent, the L. M. C.

No. 463.

Order to File New Bond.

[Title of Court and Cause.]

It appearing that on ———, 1893, it was ordered that the injunction heretofore granted by ———— be continued as granted by said justice, pending the litigation, and it also appearing that it was not then provided for a renewal of the bond before given by the plaintiff, AB, and that none has since been given by said plaintiff, it is now, upon the motion of defendant, the L. M. C., ordered that the said plaintiff, ————, prepare and file with the clerk a good and sufficient injunction bond in the sum of twenty thousand dollars, and that the same be done with all convenient speed, and that the same be submitted to the counsel of the L. M. C. before being filed with the clerk.

————,

Judge.

No. 464.

Order Dissolving Restraining Order. (a)

[Title of Court and Cause.]

In the above-entitled cause it appearing that notice was received by the counsel for plaintiff, ————, of the order made on the —— day of ———, 1895, requiring said company to file a bond on or before this date, or show cause why it should not be done, and it now appearing that no bond has been filed, and the said company having failed to make any appearance or show cause as by said order required, it is now ordered that the restraining order now existing against the defendants be and is dissolved.

Dated ————, ———— 28th, 1895.

————,
Judge.

(a) Eq. R. 55.

No. 465.

Order Dissolving or Continuing Injunction on Motion.

[Title of Court and Cause.]

Upon motion, etc., by counsel for the defendant [if plaintiff appears, and upon hearing counsel for the plaintiff], and upon reading the order dated, etc., [enter affidavits and answers, if any, and if plaintiff does not appear, an affidavit of service of notice of this motion on the plaintiff]. This Court doth order that the injunction awarded by the said order, dated, etc., do stand dissolved [or be continued until the hearing of this cause or until the further order of this Court].

No. 466.

Decree Making Injunction Perpetual as to Copyright. (a)

[Title of Court and Cause.]

This Court doth order that the injunction granted (awarded) in this cause to restrain the defendants, their servants, agents, or workmen, from printing, publishing, or vending a book, comedy, or farce, called etc., or any part thereof, be made perpetual; and the plaintiff (by his counsel) waiving the account prayed by the bill, the Court doth not think fit to direct any account. Defendants to pay plaintiff's costs.

(a) Desty Fed. Proc., sec. 84.

Subsection 12.

Receivers.

No. 467.

Prayer for Appointment of Ancillary Receiver in Suit for Foreclosure of Railroad Property. (a)

And your orator further prays that during the pendency of this suit a receiver or receivers ancillary to the receivers appointed in the said similar suits pending in the territories of New Mexico and Arizona, between your orator and the said railroad company as defendant, in said several Circuit Courts of said Territories, may be appointed according to the course and practice of this Court, with the usual powers of receivers in like cases of all the property, equitable interests, things in action, effects, money, receipts and earnings, rights, privileges, franchises, and immuni-

ties of the said railroad company, and its tolls, incomes, rents, and issues, and of all other property included in and covered by the said second mortgage within the jurisdiction of this honorable Court, and the defendant railroad company be decreed to make such transfer or conveyance to such receiver or receivers and to the purchasers of said property at any sale as aforesaid as may be necessary and proper to put them or any of them in possession and control of said property.

(a) Tysen v. The Wabash Ry. Co., 8 Biss. 247; Mercantile Trust Co. v. Atlantic & P. R. Co., 80 Fed. Rep. 18.

No. 468.

Order Appointing Receivers (in Equity). (a)

[Title of Court and Cause.]

Now on this —— day of ———, A. D. 1894, comes the complainant, The Mercantile Trust Company of New York, by Alesander & Green and White & Monroe, its solicitors, and also comes the defendant, the Atlantic & Pacific Railroad Company, by C. N. Sterry, its solicitor, and thereupon, upon the complaint filed on behalf of the complainant, comes on for hearing the application of the Mercantile Trust Company for the appointment of a receiver or receivers, which said application is not resisted by the said defendant railway company, the said defendant railway company waiving service of all notices, and the same having been argued by counsel and considered by the Court, and the Court having been fully advised in the premises, it is now hereby

Ordered, adjudged, and decreed that Joseph W. Reinhart, John J. McCook, and Joseph C. Wilson be and they are hereby appointed receivers of all and

singular the lands, tenements, hereditaments of the said Atlantic & Pacific Railroad Company, covered by the mortgage sought to be foreclosed herein, and all the personal estate thereof, including all its railroad tracks, etc., and all its locomotives, etc., etc., and other rolling stock; its machinery, etc., etc., furniture and material of every name, nature, and description, and all its stocks, bonds, and obligations, choses in action, accounts, and rights under contracts now owned or possessed by the said defendant railway company, and together with all its corporate rights, franchises, and all its tolls, etc., etc., income and profits, and that the said receivers be and they are hereby authorized and directed to take immediate possession of all and singular the railroads and properties above described or referred to, wherever situated or found, and to continue the operation of said railroad and every part and portion thereof, and to run, manage, and operate the said railroad and such other railroads as the said defendant railway company holds, controls, or operates, under lease, contract, arrangement, or otherwise, and as heretofore run and operated, or which have been or are being operated by, for, or in the interest of the said Atlantic & Pacific Railroad Company, and to conduct the business and occupation of a common carrier of passengers and freight and discharge all public and governmental duties obligatory upon said corporation, or upon any other corporation whose lines of road are now in the possession of or operated by said Atlantic & Pacific Railroad Company, and to preserve the said property in proper condition and repair the same, so that it may safely and advantageously be used; and to protect the same, and to employ such persons and make such payments and disbursements as may be needful and proper in doing so.

It is further ordered that each of said receivers, within the next thirty days, file with the clerk of this Court, a proper bond with surety or sureties to be approved by a judge of this Court in the penal sum of twenty thousand dollars conditioned for the faithful discharge of their duties, and to account for all the funds coming into their hands according to the order of this Court.

Each and every of the officers, directors, agents, or employees of the said Atlantic & Pacific Railroad Company, and all other persons or corporations, are hereby required and commanded to turn over and deliver to such receivers, or their duly constituted representatives, any and all railroads, property, books of account, vouchers, deeds, leases, contracts, bills, notes, accounts, moneys, stocks, bonds, or obligations or other property in his or their hands, and in his or their control, and each and every of such directors, officers, agents, employees, persons, or corporations, are hereby commanded and required to obey and conform to such orders as may be given to them from time to time by such receivers, or their duly constituted representatives, in conducting the operations of said property and in discharging their duties as such receivers.

And it is further ordered that the said defendant, its agents, officers, and servants, and all other persons, be, and the same are hereby, restrained and enjoined during the pendency of this action from interfering with, transferring, selling, or disposing of any of the property of the said defendant railway company, or from taking possession of, or in any way interfering with the same or any part thereof, or from interfering in any manner whatever with the possession or management of any part of the said property over which the receivers are hereby appoint-

ed, or in interfering in any manner to prevent the discharge of their duties or of the operation of the said property under the order of the Court.

Said receivers are hereby fully authorized to operate the said Atlantic & Pacific Railroad Company, and to manage the property of said corporation in such a manner as will, in their judgment, produce the most satisfactory results consistent with the discharge of the public duties imposed thereon and to collect and receive all the income therefrom and all of the debts due said company, of all kinds, and for such purpose are hereby vested with full power in their discretion, to employ and discharge and to fix the compensation of such officers, agents, attorneys, managers, superintendents, and employees as are necessary to aid in the discharge of their duties, and they and each of them shall have power, with the sanction of the Court, to redeem any and all of the securities of the company now pledged as security on loans of money.

Said receivers are fully authorized and empowered to institute and prosecute such suits as may be necessary in their judgment for the proper protection of the property and trusts hereby vested in them, and to likewise defend all such actions instituted against them as such receivers, and also to come in and take the prosecution and defense of any of the suits now pending against the Atlantic & Pacific Railroad Company, the defendant, the prosecution or defense of which will, in the judgment of the said receivers, be necessary for the proper protection of the property placed in their charge.

It is further ordered, adjudged, and decreed that, out of the moneys that shall come into the hands of said receivers from the operation of said railway

properties or otherwise, they shall: (here follow directions for payment.)

ROSS,
District Judge.

(a) Mercantile Trust Co. v. Atlantic & P. R. Co., 80 Fed. Rep. 18.

No. 469.

Order Substituting Receiver. (a)

[Title of Court and Cause.]

The foregoing cause having come on to be heard on the motion of AB to be substituted as receiver in the place and stead of CD, and it appearing to the Court that due and legal service has been made of said motion upon all the parties who have appeared herein, now, therefore, on motion of ————, solicitors for said AB, receiver, and all the parties hereto appearing in open Court by their solicitors, it is hereby ordered that the said AB be, and he hereby is, substituted in his capacity as receiver of said ———— company in the place and stead of said CD, formerly receiver thereof, and that said AB succeed to all the rights of said CD as receiver in this action.

Dated ———, 18—.

————,
Judge.

(a) Bausman v. Denny, 73 Fed. Rep. 69; 48 U. S. App. 312.

No. 470.

Plaintiff's Consent to Substitution. (a)

[Title of Court and Cause.]

CD, the plaintiff in the above-entitled action, suggests to the Court his resignation from the office of

receiver, and consents to the substitution of AB, his successor in the receivership, as his successor also as plaintiff in this action, and consents that the Court make an order in conformity herewith.

Dated May 4th, 1895.

CD.

(a) Bausman v. Denny, 73 Fed. Rep. 69; 48 U. S. App. 312.

No. 471.

Petition by Receiver for Leave to Borrow. (a)

[Title of Court and Cause.]

To the Honorable, the Judges of the, etc.

AB, the receiver heretofore duly appointed in the above entitled cause as receiver of the property of the Atlantic & Pacific Railroad Company, defendant, within the jurisdiction of this Court.

Respectfully represents and states that: (state facts relating to one of the leased lines in receiver's hands.)

Your receiver states that said line of railway forms a connection with the remainder of the Atlantic & Pacific Railroad at ————; that the use of said line of railroad is necessary and essential for the transaction of the railroad business in the hands of your receiver and without the use of said line of railway the traffic and business of the Atlantic & Pacific Railroad would be very seriously crippled and injured.

Your receiver states that it is for the benefit and advantage of the Atlantic & Pacific Railroad, its stockholders, its mortgage bondholders, its general creditors and all concerned, that the use of said line of railway should be continued as a part of said Atlantic & Pacific Railroad.

Your receiver states that on the —— day of ———, 1894, the semi-annual rental of two hundred and eighteen thousand one hundred and thirty-three dollars ($218,133.00) will be due and payable; that he has not available and will not have available on that date, from the revenues of said railroad property in his hands, the money to pay said rental, and it will be necessary to borrow the sum on the security of the property in the hands of your receiver.

Your receiver, therefore, respectfully prays that this Court will authorize him to borrow at not to exceed six per cent interest per annum two hundred and eighteen thousand one hundred and thirty-three dollars ($218,133.00) for such a period of time as will be found most convenient and practicable on the security of the Atlantic & Pacific Railroad in the hands of your receiver and under the control of this Court; that said loan be made a lien on said property of the Atlantic & Pacific Railroad Company in the hands of your receiver, and that the money so realized be applied in paying said rental due the said lessor. And your receiver further asks for such relief as may be proper and equitable in the premises.

A B,
Receiver of the Atlantic & Pacific Railroad.
By their attorney,

———,
General solicitor.

(a) Mercantile Trust Co. v. Atlantic & P. R. Co., 80 Fed. Rep. 18.

No. 472.

Prayer in Receiver's Petition for Leave to Issue Certificates.

Your petitioner believes that it is impossible to borrow moneys sufficient to pay the amounts herein-

before stated as being presently due and payable, except upon an issue of receiver's certificates issued under the authority of this Court and in proper form, payable in gold coin of the United States, in two years from their date, but to be redeemable at the option of your petitioner at par, and accrued interest on thirty days' previous notice, at any time after six months from their date, and to bear interest at the rate of 6 per cent per annum, payable semi-annually, and to be a first lien upon all of the property of the O. R. & N. Company, prior to any existing mortgages upon the property of the said O. R. & N. Company.

Requiring the advice of the Court, your petitioner presents this, his petition, in order to properly advise the Court of the facts aforesaid, and to invite the aid and instruction of this Court thereon.

Wherefore, your petitioner prays that this honorable Court will take into consideration the facts and circumstances aforesaid, and will advise and direct your petitioner in the premises, and that this honorable Court will, in its discretion, authorize an issue of receiver's certificates in proper form, to an amount not exceeding in the aggregate until the further order of the Court, $———, such certificates to be payable in two years from their date, but any or all of such certificates to be redeemable at the option of the receiver at par, and accrued interest on thirty days' previous notice to the holder thereof, at any time after six months from their date, and to bear interest at the rate of six per cent per annum payable semi-annually, and to be a first lien upon all of the property and premises of the O. R. & N. Company prior to and paramount to the lien of the mortgage of the said O. R. & N. Co. to (state existing mortgages). That such certificates may be issued in such denominations and at such times as your petitioner may find necessary. That

your petitioner be authorized to sell such certificates from time to time at a price not less than par, and accrued interest, and that the proceeds of such certificates be used by your petitioner as receiver for the following purposes, to wit: (state what, e. g.)

First.—To pay until the further order of the Court and without any additional authority, for the cost already or hereafter incurred of repairing the railroad and property of the O. R. & N. Company, and of putting such railroad and property in the same condition for its general purposes, that such property was before the recent flood.

Second.—To make up, until the further order of this Court, and without any additional authority, any deficiency that may exist in operating expenses over gross earnings.

No. 473.

Notice of Receiver's Petition for Leave to Borrow. (a)

[Title of Court and Cause.]

To the ————, or its counsel of record—

You are hereby notified that the receivers heretofore appointed in the above-entitled action will, on ———, the —— day of ———, A. D. 18—, present to the Court or judge thereof, at the city of ————, in the State of ————, at the hour of —— o'clock A. M., or as soon thereafter as counsel can be heard, a petition, a true copy of which is hereto attached and made a part of this notice, marked "Exhibit A"; and will, at said time and place, present to said Court, or judge thereof, other evidence, both oral and written, in support of said application, and will apply and ask for an order as prayed for in said petition.

————,

Solicitor for receivers.

Exhibit A.

(Copy petition annexed.)

(a) Mercantile Trust Co. v. Atlantic & P. R. Co., 80 Fed. Rep. 18.

No. 474.

Answer to Receiver's Petition. (a)

[Title of Court and Cause.]

The answer of The Mercantile Trust Company, plaintiff herein, to the petition of the receivers for authority to borrow money to pay rental on line from ———— to ————.

Plaintiff admits the execution of the contract and lease on the —— day of August, 1884, as set forth in said petition.

Plaintiff further admits that the defendant railroad company took possession of the line of railway from ———— to ————, and was in the possession and operation of the same until the appointment of the receiver herein, and that said receiver is now in the possession of and operating said line of railway and appurtenances.

Plaintiff further admits that the line of railway operated under said lease and contract is the only western outlet and inlet, by rail, for traffic over said Atlantic and Pacific Railroad, and that plaintiff is informed and believes the use of said line of railway is necessary and essential for the transaction of the business of said Atlantic and Pacific Railroad.

Wherefore, this plaintiff prays that the Court, the premises considered, may make such order in refer-

ence to said petition as in the discretion of the Court shall to it seem proper.

THE MERCANTILE TRUST COMPANY,
By H. C. DEMING,
Secty.

ALEXANDER & GREEN,
WHITE & MONROE,
Solicitors for The Mercantile Trust Company.

(a) Mercantile Trust Co. v. Atlantic & P. R. Co., 80 Fed. Rep. 18.

No. 475.

Order Authorizing Loan and Issue of Certificates. (a)

[Title of Court and Cause.]

Now, on this —— day of ———, 1894, the petition of the receivers having been presented to me asking for authority to borrow two hundred and eighteen thousand one hundred and thirty-three ($218,133.00) dollars, to pay the semi-annual rental on the line of railway and appurtenances from ———— to ————, in ————, due ———, 1894, under the contract and lease of ———, 1884, between ———— and ————, and to secure such loan upon the property of said Atlantic & Pacific Railroad Company in the hands of the receiver, and I having considered said petition and being of the opinion that such authority should be granted,

Do hereby consider, order and adjudge that AB, receiver of the Atlantic & Pacific Railroad, is hereby empowered and authorized to borrow at not to exceed six per cent per annum, said sum of two hundred and eighteen thousand one hundred and thirty-three ($218,133.00) dollars and directed to apply the same in the payment of the rental of the line between ——— and ———— in ———— and appurtenances, under said contract and lease, and that said loan shall be

secured upon said property of the Atlantic & Pacific Railroad Company in the hands of said receivers and under the control of this Court and the earnings of said property, and shall constitute a lien upon said property and earnings as an obligation incidental to the receivership.

And it is further ordered and decreed by the Court that the said receiver may make and execute all such notes or receivers' certificates, or other evidence of indebtedness which the said receiver may be required to issue for said loan.

N. C. COLLIER,
Judge.

(a) Mercantile Trust Co. v. Atlantic & P. R. Co., 80 Fed. Rep. 18.

No. 476.

Order for Issue of Receiver's Certificates.

[Title of Court and Cause.]

The petition of M. R., as receiver of the property of the XY Railway Company, and of, etc., having come on this day for hearing, said receiver appearing by ————, Esqs., his solicitors, and ————, one of the petitioners, appearing by ————, Esq., of counsel for him, and the complainant appearing by ————, his solicitors; and it appearing that there are not parties to this suit or persons interested in said railway company or in its property who are interested to oppose the granting of said petition, and who have a right so to do, and that the exigency of the case is such that due notice cannot be given to all the creditors of said company, or all the stockholders, or all the holders or pledgees of mortgage bonds which are subsidiary to said first mortgage bond issue of ————; and it further appearing that the peti-

tioners now before the Court own and represent a majority of the total issue of capital stock of said company, etc.; and it further appearing that it is for the interest of all owners and pledgees of stock and of all unsecured creditors, that the interest on said first mortgage bonds be paid on or before the —— inst., as thereby a maturity and default in the payment of the principal of said bonds and a consequent foreclosure of the mortgage securing the same, and a sale of all the assets of said railway company will be avoided, and that this can be done by the issue and sale of receiver's certificates, as proposed in said petition; and the Court being satisfied in view of said petition and of other facts appearing from its files and records herein that it is a proper exercise of its discretion and power in the premises to authorize and direct the receiver so to do.

Now, upon motion of ————, Esqs., solicitors for said receiver, it was ordered that the prayer of said petition is hereby granted, and that the receiver be, and is hereby authorized and directed forthwith to raise the necessary funds to enable him to pay the sum of ————, defaulted interest due on ———, 18—, upon said ————, outstanding first mortgage bonds, by the issuance and sale of receiver's certificates, which will bear interest at 8 per cent per annum, payable semi-annually, and shall be by their terms a first lien upon all the assets of said railway company; that said certificates shall be countersigned by the clerk of this Court, or his deputy, and not to be valid until so countersigned; that such certificates shall be issued in such numbers and in such amount of each certificate as in the receiver's discretion will best subserve the object to be accomplished, but shall not exceed in the aggregate ————, and shall be serially numbered; that the receiver shall forthwith

sell said certificates in the open market at the best price obtainable therefor by him, but not less than ninety (90) per cent) of the face value thereof, and no more shall be issued and sold than are necessary to raise said sum within the limit of discount above allowed; that forthwith upon raising said sum, and within ninety days from ——— 1, 18—, if he is able so to raise it, the receiver shall pay the same to (state disposition to be made of the money); that the receiver is also authorized and directed to pay out of the funds now in his hands arising from current income of said railway company, and apply toward said past due interest, such sum as he may deem it safe and advisable to advance for that purpose, and in the event that he can and does advance any such sum the total amount of receiver's certificates to be issued and sold under this order shall be diminished by a corresponding amount; and upon fully carrying out the directions of this order, the receiver shall file his report of his doings hereunder.

Dated ————, 18.——.

————,
Judge.

No. 477.

Receiver's Report of Sum Borrowed and Form of Certificate.

[Title of Court and Cause.]

The special report of M R, receiver of said X Y Company, as to his doings under the order of this Court, dated and entered ———, 18——, directing him to borrow a certain sum of money upon receiver's certificates, for the purpose of paying interest upon the bonds under the first mortgage secured upon the property in his possession, respectfully shows to the Court that:

1. Upon the entry of said order the undersigned immediately made diligent efforts to procure loans to the amount necessary to carry out the directions of said order, and between then and ———, 18—, borrowed in all from sundry persons, as hereinafter stated, the sum of ——— dollars, and advanced from funds in his own hands as such receiver, the sum of ———, and forthwith paid the same over to (state disposition of money).

2. Pursuant to said order the undersigned issued receiver's certificate in the form hereinabove stated, numbered consecutively from one to eleven, running to the sundry persons from whom the several sums were borrowed for said purpose, and for the sundry sums so borrowed; each of said sums was borrowed upon the terms of discount of ten per cent from the face amount of the certificate to be issued therefor, and eight per cent interest per year from the date of the certificate until paid, and each certificate was dated ——— —, 18—, and was countersigned by the deputy clerk of this court. The following is a schedule of the numbers, names of payees, amount borrowed, and amount of certificate:

No. Names of Payees. Amt. Borrowed. Amt of Cert.

3. The following is the form adopted by the undersigned for the certificates so issued by him:

Receiver's Office X Y Railway Company.

(Place and date.)

No. ———

I, the undersigned, M R, as receiver of the property of the X Y Company, hereby certify, as such receiver, that there is due to ——— or order, from me, as such receiver, and not individually, ——— dollars ($—), with interest at the rate of eight per cent (8 per cent) per annum from date until paid, payable semi-annually, on account of money borrowed by said receiver under order of court for payment of

interest due ———— ——, 18——, on first mortgage bonds of the X Y Company, assumed as a first mortgage obligation by said X Y Company.

The obligation is issued under and pursuant to an order of the United States Circuit Court, for the district of ————, and in the ———— Division thereof Hon. ————, District Judge, presiding, dated and entered on ———— ——, 18——, in a suit in equity in said court in said district and division, in which A B is complainant and the said X Y Company, S T and V W, are defendants, and which is numbered ———— on the docket of said court, and this obligation is part of the loan thereby authorized to be made by me as receiver of said railway company, amounting in all to the sum of ————, and this obligation is made and constituted, as provided in said order of court, a first lien upon all of the property of every nature and description of said company, and upon the proceeds thereof in case of its sale.

This certificate is one of an issue of sundry certificates in varying amounts, the total amount of which shall not exceed ————, and which shall not be valid until countersigned by the clerk of said Circuit Court or his deputy.

In witness whereof, the said receiver, in pursuance of the order aforesaid, and not otherwise, has signed this certificate on this —— day of ————, 18——.

————,
As Receiver of X Y Company.

Countersigned:

————,
Clerk of U. S. Circuit Court.

By ————,
Deputy Clerk.

All of which is respectfully submittted.

M R,
Receiver.

No. 478.

Petition for Leave to Sue Receiver. (a)

[Title of Court and Cause.]

To the Honorable, the Judges of the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California:

Your petitioner, the United States Trust Company of New York, respectfully shows:

I.

That your petitioner is a corporation bearing the corporate name of United States Trust Company of New York, duly created and existing under the laws of the State of New York, and is a citizen of said State and has its principal office and place of business in the city of New York.

II.

That by an order heretofore duly made and entered in the above-entitled suit, A B and C, were duly appointed receivers of the property and franchises of the A P Railroad Company, a corporation, and the property and franchises of the S. F. Railway Company, a corporation, and of the property and franchises of the C D Ry. Co., a corporation, defendants in said suit, as will more fully and at large appear by reference to the said order now on file and of record herein, and which said order your petitioner prays may be taken as part of this petition as fully as though incorporated in the body hereof. That the said A B and C duly qualified as such receivers and entered upon the discharge of their duties as such.

III.

That it is the desire and wish of your petitioner to institute in the above-entitled court and prosecute to a final judgment, a suit in equity against the A P Railroad Company, the S F Railroad Company, and the CD Railway Company, and the said AB and C, as receivers as aforesaid. That your petitioner has prepared, signed, and verified its bill of complaint in said proposed suit, and herewith exhibits to your Honors the said original bill of complaint, a full, true, and correct copy of which said original bill is hereto annexed marked "Copy Exhibit A," and your petitioner prays that the same may be taken as part of this petition as fully as though incorporated in the body hereof.

Wherefore, your petitioner prays the leave of this Court to institute the said proposed suit and prosecute the same to final judgment and therein to sue the said receivers and their successors as defendants therein, and for such other and further order as may be meet and proper.

Dated, ———, 1895.

UNITED STATES TRUST COMPANY OF NEW YORK,

Petitioner.

By A. W. HUTTON,
Its Solicitor.

(a) Desty's Fed. Proc., sec. 231.

Subsection 13.

Intervention.

No. 479.

Petition in Intervention and Bill of Intervenor. (a)

[Title of Court and Cause.]

The petition for leave to intervene, and the bill of intervention therefor, of F G, exhibited against A B, (plaintiff in the suit), X Y (defendant in suit) and M N, receiver.

F G brings this, his petition for leave to intervene herein, and presents this as his bill of intervention, leave thereto being first had, and thereupon the petition shows:

To the Judges of the Circuit Court of the United States for the District of ———, Sitting in Equity:

(Proceed as in an original bill, styling the proposed intervenor as "the intervenor," instead of "your orator.")

Wherefore, the intervenor now prays that ——— ———, may be ordered to enter an appearance to this intervening bill and may be required to answer the same, and show cause why he has not paid the intervenor's claim, etc., and that in the said order to show cause the (plaintiff and defendant) may be cited to appear herein and answer this intervening bill, though not under oath, oath or affirmation thereto by the said ————, being hereby expressly waived, and that the Court may be pleased to submit to a master for that purpose, the taking of testimony, if any be necessary, upon any issues which may be joined upon the answers hereto, and that etc., (state relief required).

Or this intervenor prays that upon hearing of the intervenor's bill a decree may be entered decree-

ing to the intervenor such relief as upon this bill and the answers thereto and on file herein may be meet and equitable that he should have.

F G,
Receiver.

By ————,
His Solicitor.

————, Solicitor.
————, Counsel.

(a) Ransom v. Davis' Admrs., 18 How. 295; Foster's Fed. Proc., sec. 201.

No. 480.

Order to Show Cause.

[Title of Court and Cause.]

Now, on this day there is exhibited to the Court the proposed bill of intervention of F G, against the complainant in this suit, A B, the defendant thereto, X Y and M N, receiver, with the petition praying for leave to intervene under the said bill and file the said bill of intervention as such, and for an order to show cause thereon, and thereupon the Court being fully advised in the premises.

It is ordered that the said F G have leave to intervene by his said bill, and file the said bill of intervention, and the same being filed.

It is now ordered, that M N, being served ten days prior to the return day hereof with a copy of the said intervening bill and of this order, whether so served in person or by service upon Mr. ————, his solicitor of record, show cause on the —— day of ———, 18——, at chambers, at ————, why he does not account with the intervenor herein, F G, and adjust, discharge, and pay the intervenor's claim for, etc., and why the Court should not pass an order ascer-

taining and decreeing the amount of the said account, and decree payment thereof as by the intervening bill prayed for.

It is further ordered that A B and X Y show cause before the Judge of the court at chambers, at ————, on the —— day of ———, 18——, being each served with a copy of this order and a copy of the said intervening bill ten days prior to the said return day, why a decree should not be passed herein on the intervening bill as prayed for therein.

It is further ordered, that a service of the copy of this order, together with a copy of the said intervening bill upon the solicitors of record for the said A B, and the said X Y, shall be a sufficient service hereof to entitle the Court to proceed herein and adjudicate upon the said intervening bill in accordance with the prayer thereof; and the respondents to said bill, if not so served ten days before the return day hereof shall make showing as now ordered before the expiration of ten days from the date of such service.

Dated, ———, 18——.

————,
Judge.

No. 481.

Introductory Words in Pleadings to Bill of Intervention and Words.

[Title of Court and Cause.]

To the Honorable, the Judges of the Circuit Court of the United States, for the —— Division of the District of ——, Sitting in Equity.

The complainant in the above-entitled suit, A B, which is also made one of the respondents in the matter of the Bill of Intervention heretofore filed in the

above-entitled cause of A B, for its separate answer to said Bill of Intervention denies, alleges, and respectfully represents and shows to the Court as follows:

Wherefore, this respondent, ————, reserving to itself all rights to which it would be entitled as if it had demurred or excepted to said bill of intervention, and protesting against this, its answer, being considered in any other or different proceeding, prays the court that said bill of intervention may be dismissed, and its prayer denied; and that said ————, as receiver of said ————, be commanded to make no further demands, in any proceeding, upon said ————, for the relief in said bill of intervention prayed.

And this respondent further prays for such other, further, and different relief as may be meet and equitable in the premises.

No. 482.

Motion to Intervene.

[Title of Court and Cause.]

Comes now, F G, of etc., and moves the Court for leave to file its petition in the intervention in the above-entitled action, a copy of which said petition is hereto attached, marked Exhibit "A," and made a part of this motion.

The foregoing motion will be based upon all of the records, papers, pleadings, and files in the above-entitled action, and upon the said proposed petition in intervention, which is hereto attached.

————,

Attorneys for Petitioner.

Subsection 14.

Proceedings before Master.

No. 483.

Motion for Reference to Master. (a)

[Title of Court and Cause.]

Comes now the above-named complainant and moves the Court that this cause be referred to a master to hear the testimony and take proofs to ascertain the amount due complainant for principal and interest of the bonds and mortgage set forth in the complaint and amended complaint, and also the reasonable compensation for the services and expenses of the trustee, including counsel fees and to ascertain the property described in and subject to the lien of the mortgage set forth in the complaint and amended complaint.

_____,

Solicitor for Complainant.

_____.

(a) Eq. R. 74; Foster's Fed. Proc., chap. 23; Seattle etc. R. Co. v. Union Trust Co., 48 U. S. App. 263.

No. 484.

Order of Reference. (a)

[Title of Court and Cause.]

This cause coming on to be heard upon the application of complainant for reference thereof, it appearing to the Court that the said defendant, by the leave of the Court, on the —— day of ——, 1895, filed its second amended answer herein, and the said defendant not seeking to make further answer, and it appearing that a reference of said cause should be had for the taking of proofs touching the matters in issue and to ascertain and report [(b) here specify the objects of the reference and the matter to be reported

on] and it also appearing to the Court that in the discharge of said duties of reference it may become convenient and necessary for the master to perform his duties as such beyond as well as within the District of Washington, it is now here ordered that the said cause be and the same hereby is referred to Eben Smith, Esq., master of this court, and he is hereby made a master in said cause and directed to take proofs of all and singular the issues herein and to ascertain and report the said outstanding bonds, with the amount of principal and interest due and unpaid thereon, and to ascertain and report what amounts are due for taxes and other prior liens on the mortgaged premises, and also to ascertain and report the services rendered by the said complainant trustee, the reasonable compensation for the same, as well as the expenses of said trustee in and about the execution of the said trust, including reasonable fees and compensation for solicitors and counsel, as prayed for in the bill and amended bill of complaint, and also to ascertain the costs and expenses of this suit, and to ascertain and describe the said mortgage premises, with the appurtenances, rights and franchises thereunto belonging, as set forth in said bill of complaint and mortgage, and whatsoever is embraced within the lien of said mortgage, and to ascertain what, if any, of the said property can advantageously be sold in separate parcels or whether the same should be sold as an entirety, and that he be and is authorized to discharge his duties as such master at any convenient place, as he may be advised, outside of, as well as within the District of Washington.

Dated, ———, 1895.

———,
Judge.

(a) See notes to Form 483.

(b) Lonsdale Co. v. Moies, 2 Cliff. 538.

No. 485.

Summons. (a)

[Title of Court and Cause.]

In pursuance of the authority and directions contained in an order made in the above cause by Hon. ————, Judge of said Court, dated on the —— day of ———, A. D. 18—, I, the undersigned master of this court in said cause, do hereby summon you, ————, defendant, to appear before me at my office ————, State of ————, on ———, the —— day of ———, A. D. 18—, at the hour of — o'clock in the forenoon of that day, to attend a hearing before me, the said master, of the matters in reference in the said cause to be had by virtue of the order of said Court of and for said District of ———, ———— Division, ——— Circuit, Hon. ———— above referred to, and hereof fail not at your peril.

Dated —— day of ———. A. D. 18—

————

United States Master in Chancery, District of ———, ———— Division.

[Seal of United States Master in Chancery]

Underwriting: To proceed with the taking of proofs as in said order directed, of all and singular the issues in said cause, to ascertain and report [here state the matters of reference as set forth in the order; see (a) in Form No. 485], and to do all and singular the matters required under and by said order of reference.

————.

United States Master in Chancery, in and for the District of ————, ———— Division of the Judicial Circuit.

[Seal of United States Master in Chancery.]

I direct the above summons to be served on the defendant, or its solicitors, ten days previous to the return day thereof.

————,

United States Master in Chancery, in and for the District of ————, ———— Division of the Judicial Circuit.

[Seal of United States Master in Chancery].

(a) Eq. R. 78.

No. 486.

Master's Certificate. (a)

[Title of Court and Cause.]

United States of America,
District of ————,
————Division,
———— County. } ss.

Be it remembered that on the —— day of ————, A. D. 18—, I issued under my hand and official seal, as United States Master in chancery for the District of ————, ———— Division, a summons with underwriting and direction for service in the above entitled cause, together with proof of service thereof on an admission of service thereof by ————, solicitors for defendant ———— Company, thereto appended, which is herewith returned attached hereto.

That on the —— day of ——, A. D. 18—, at the hour of — o'clock in the forenoon of that day, at ————, New York City, in the State of New York, appeared before me, said United States master in chancery and United States examiner in said Court, WHP, for the complainant, AB, A and C solicitors for the

defendant, and it was then and there agreed by the respective solicitors that SD, stenographer, was in all respects satisfactory to report the testimony and proofs taken before me, and he was then and there by me designated as such stenographer and the usual oath of stenographer was by counsel waived, and the method of procedure upon the hearing was then and there by me regulated as follows: The complainant will introduce such testimony and proofs as it may deem advisable.

That thereupon on said named day, at said hour and place named, and on subsequent days as in the record of said testimony appears, F, G, H and K were produced and personally came before me as witnesses for and in behalf of the complainant in the above entitled case, and whose testimony was and is urged to be material and necessary in said cause, and the said named witnesses being all of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn on their respective corporal oaths to testify the truth, the whole truth, and nothing but the truth upon the matters in controversy in said civil cause, testified as follows:

Schedule of Proofs "B."

————,

United States Master in Chancery, District of ———,
———— Division.

[Seal]

Testimony.

————, 18—,

On this ———, 18—, at the hour of eleven o'clock in the forenoon, at ————, appeared before me, ————, United States Master in Chancery in said Court:

WHP, Esq., for the complainant, AB.

A & C, Esq., solicitors for the defendant.

SD, stenographer, being by the respective solicitors agreed to as in all respects satisfactory to report the testimony and proofs taken before me, is designated as such stenographer, and the usual oath of stenographer is by counsel waived and the method of procedure upon the hearing is now regulated as follows:

The complainant will introduce such testimony and proofs as to him may seem advisable.

F, a witness on behalf of the complainant, being produced and by me first carefully cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth relating to the matter now under examination in this cause before me, and being orally examined by Solicitor WHP, now testified as follows: . . . .

(b) And I do further certify that the foregoing depositions, each and all of them of said named witnesses were before me then and there reduced to writing by SD, stenographer above named, and said depositions were respectively subscribed in my presence after having been so reduced to writing and read over to them respectively, and verified at the dates and times as the same appear in the record thereof; and I further certify that said depositions were taken under and pursuant to a general order of reference from this Court, of date ———, 18—.

I further certify that I am not of counsel nor attorney for either of the parties to this suit, or in any way interested in the event of this cause.

I further certify that the exhibits, by me duly certified as such, were, as appears in the record of said hearing and taking of said depositions, duly offered in evidence before me, and were by me then and there received as such, to be by me returned with said depositions.

I further certify that I have returned said depositions and exhibits to the said Court from which they were taken.

I further certify that the fees of the stenographer, SD, for taking said depositions and transcribing the same, with copies as ordered by the respective solicitors, amounted to the sum of ————.

I further certify that there were three sessions of the taking of said testimony, as appears by the record thereof, whereupon said complainant's counsel announced that the taking of depositions in the city of New York was closed.

Given under my hand and official seal at the city of ————, county, ————, within said District of ————, on this —— day of ———, 18—.

————,

United States Master in Chancery, for the District of————, ——— Division.

[Seal]

(a) Eq. R. 76.
(b) Eq. R. 81.

No. 487.

Master's Report. (a)

[Title of Court and Cause.]

Report of United States Master in Chancery for the District of ————, ——— Division.

To the Circuit Court of the United States for the District of ————, ——— Division, ——— Judical Circuit, in Equity, Honorable ———— Judge.

In pursuance and by virtue of an order of reference made in the above-entitled cause by said Court, Honorable ————, Judge, dated ———, 18—, in and by which it was, among other things, ordered

that the said cause be and the same thereby was referred to ————, master of said court, and he was thereby made the master in said cause and directed to take proofs of all and singular the issues therein, and to ascertain and report [state the matters referred as set forth in the order; see (a) in Form No. 484].

And the said master was authorized to discharge his said duties as such master at any convenient place as he might be advised, outside of as well as within the district of ————, and

I, the subscriber, United States Master in Chancery for the District of ————, ——— Division, residing at the city of ————, said district of ————, do respectfully certify and report:

That I have taken depositions and proofs in behalf of said complainant in said entitled cause touching the matters contained in said order of reference, and the schedule herewith returned as a part of this my report, marked Schedule of Proofs "B," contains the depositions and proofs so by me taken, reference to which is here now made.

I further certify and report [here set out the matters reported on].

[Seal] A B,

United States Master in Chancery, for the District of ————, ——— Division.

(a) Eq. R. 76.

No. 488.

Order Appointing Special Master. (a)

[Title of Court and Cause.]

By agreement of counsel for the respective parties hereby ordered that ————, Esq., be, and he is hereby, appointed special master in this cause to

take the testimony and report findings of fact and conclusions of law to the Court, with all convenient speed, on the issues and also upon the question of costs and damages.

(a) Eq. R. 74, 75.

No. 489.

Report of Special Master. (a)

[Title of Court and Cause.]

To the Honorable ————, Judge of said Court:

Pursuant to the order of reference made in the above entitled suit on the —— day of ——, 18—, and by stipulation of the parties hereto, the hearing of this case was commenced before me on ———, 18—, at the office of ————, in the city of ———— and State of ————, and regularly proceeded with from day to day thereafter until it was closed on the —— day of July, 18—, as will more fully appear from the report of the stenographer thereof and transcript of the testimony filed herein.

At said hearing ————, Esq., appeared for the complainant and ———, Esq., appeared for the defendant, ————.

After having heard the evidence and the oral argument of counsel for the respective parties, the case was taken under advisement until this date, and now, being advised of the evidence and the law relating hereto, I find and state the following facts and conclusions of law:

Findings of Fact.

(Set out facts in paragraphs numbered.)

That the defendant ———— has suffered great damage by reason of the improper issuance and continuance of said restraining order; said damages being specified as follows: . . . .

That these include all the items of damages established by the evidence for which the obligors in the bond are legally liable.

Conclusions of Law.

As conclusions of law from the foregoing facts, I find as follows:

(Set out conclusions in paragraphs numbered).

Dated, etc. Respectfully submitted,

————,

Special Master.

(a) Eq. R. 76.

No. 490.

Findings of Fact and Conclusions of Law of Master. (a)

[Title of Court and Cause.]

In the matter of the petition of C. W., receiver herein, for instructions, as to the claim of ———— for ————; and the intervening petition of the ———— Company, in that behalf.

To the Honorable Judges of the Circuit Court of the United States, for the —— District of California:

The undersigned, special master in chancery of this Court, to whom the said cause was referred upon the issues raised by the petition of C. W., receiver herein, filed on the —— day of ———, 18—, and the answers thereto of————, to take the proofs of the respective parties and report the same to the Court, with his findings of fact, and conclusions of law thereon, respectfully reports that, in pursuance of due notice to all of said parties (a copy whereof is hereto attached), he did proceed to take said proofs at the ——— in the city and county of ————, at the hour of — o'clock, in the forenoon, on ———, the — day of ———, 18—, when and where appeared as solicitors for and on behalf of the respective parties, viz.:

And, the taking of said evidence not being completed on said day, the same was continued at the same place on the — and — days of ———, 18—, and, not being then completed, the same was, by consent of the parties, adjourned until 10 o'clock A. M., on the —— day of ———, 18—, at ————, in the ————, and was then and there continued and completed.

The undersigned reports and files herewith the said evidence, stipulations of counsel, and proofs, transcribed from the stenographic notes thereof, then and there taken, the same consisting of the evidence of ————, witnesses produced, sworn and examined by and on behalf of the said Intervenor, ————, contained in pages numbered 1 to 67 inclusive, marked Vol. I of evidence and the written papers marked, respectively, "Intervenor's Exhibits," and numbered consecutively, from — to — inclusive; and the evidence of ————, respectively, witnesses produced, sworn, and examined by and on behalf of the said receiver, ————, and on behalf of the defendant, ————, contained in pages numbered — to —, inclusive, marked Vol. III of evidence, and in the written documents marked respectively "Defendant's Exhibits," and numbered — to —, inclusive; all of which exhibits are attached hereto, and made part of this report.

It appears from the record in this case (copied and filed as Intervenor's Exhibits, numbered 1 and 2) that [set out facts as to suit].

Upon the issues raised by said receiver's petition and intervenor's petition, said respective answers thereto and replies to said answers, the said evidence was taken.

It may be remarked that the issues upon the pleadings, when analyzed, are entirely upon questions

of law and not of fact: and the undersigned, in passing upon the objections of the respective parties to the evidence offered, overruled said objections, and admitted all such evidence, subject to said objections, without passing upon the admissibility, materiality, or relevancy of the same, at the time; it being understood that each party is entitled to the benefit of all said objections and exceptions to the ultimate admission or rejection of such evidence: and the undersigned reports to the Court all of the said evidence with his findings of fact thereon.

Findings of Fact of Master.

Upon the pleadings, stipulations of counsel, and evidence, the undersigned finds and reports the following facts: [Set out facts in numbered paragraphs.]

Conclusions of Law.

Upon the foregoing facts the undersigned respectfully reports to the Honorable Court as his conclusions of law, and his finding and determination upon the matters in issue under the said pleadings, and included in the said order of reference, the following: [Set out conclusion numbered in paragraphs].

Fourth. The undersigned, therefore, respectfully reports and recommends that an order be made and entered, upon the petition of CW, the receiver herein, instructing and directing the said receiver [state what]. All of which is respectfully submitted.

Dated ———, 18—.

———,

Special Master in Chancery aforesaid.

(a) Eq. R. 76.

No. 491.

Exceptions by Complainant to Master's Report. (a)

[Title of Court and Cause.]

The complainant excepts to the report of WT, Special Master, filed herein in the following particulars:

First. To the second finding of fact, in this, etc. [State exceptions.]

Ninth. Complainant further specifies that the evidence does not justify the findings of fact numbered second, third, eighth, ninth, tenth, and eleventh, in this, because:

To the Conclusions of Law.

First. The complainants except to the second conclusion of law, because under the facts the complainant is entitled to [state what].

Second.—The complainant excepts to the third conclusion of law, that, etc., because the pleadings show that, etc.

Third. The complainant excepts to the fourth conclusion of law, that said conclusion is against law, because etc.

_____,

Solicitor for Complainant.

(a) Eq. R. 83.

No. 492.

Exceptions by Defendant to Master's Report. (a)

[Title of Court and Cause.]

Comes now the defendant XY, and excepts to the findings of fact and conclusions of law filed herein, by WT, special master herein, in the following particulars, to wit:

First. Defendant excepts to the refusal of the master to find the —— finding of fact requested by

defendant, which finding of fact is as follows, to wit, etc., the master finding, in his —— finding of fact, that the defendant is, etc.

Twelfth.—Defendant excepts to the refusal of the master to find the second conclusion of law requested by defendant, which conclusion of law is as follows, to wit, etc., the master finding in his fourth conclusion of law that the defendant is entitled, etc.

Respectfully submitted,

————,

Solicitor for Defts.

(a) Eq. R. 83.

No. 493.

Decree on Appeal from Special Master's Report. (a)

[Title of Court and Cause.]

On the —— day of ————, 1897, came on to be heard the exceptions of complainant and defendants to the report of the special master filed herein, on the —— day of ————, 1897, and the same were argued by counsel for complainant and defendants respectively.

Whereupon, upon consideration thereof, because it is the opinion of the Court that such is the law, it is

Ordered, adjudged, and decreed by the Court that as to the defendants ST and VW, the suit is dismissed.

That the exceptions of the complainant be, and they are hereby, overruled as to the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth findings of fact, and as to the second and third conclusions of law found by the master.

And it is further ordered, adjudged and decreed by the Court that as to the 11th finding of fact, wherein it is found that the defendant, XY, has suffered dam-

age, by reason of the improper issuance and continuance of the said restraining order, in the sum of ———, it is adjudged and decreed that said sum be modified, and that the amount of said damages be adjudged and decreed to be the sum of ————, with interest thereon at 7 per cent per annum from ———, 1897, such interest to cease from the date when the complainant or sureties upon the bond shall make a legal tender of said amount with interest due thereon, or shall deposit the same with the clerk of this court. And that the 12th finding of fact be modified to conform to the judgment herein on the 11th finding of fact.

And that the amount found to be due by the 4th conclusion of law found by the master be reduced to the sum of ———, with interest thereon at 7 per cent per annum from ———, 1897, and that the 5th conclusion of law found by the master be modified to conform thereto.

And that judgment be entered herein upon the report of the said master, so modified as aforesaid, in favor of XY and against the said plantiff, and the said ST & VW., the sureties on the bond aforesaid, and against each of them, in the sum of ———, with interest thereon at 7 per cent per annum, from the —— day of ———, 1897. And that said interest shall cease from the date when the said plantiff or the said sureties on the bond, or any of them, shall make a legal tender of said sum of ———, with interest thereon at 7 per cent per annum from the —— day of ——, 1897, to the said XY.

Dated ————, ———, 1897.

JAS. H. BEATTY,
Judge.

(a) Eq. R. 83.

No. 494.

Order Sustaining Exceptions. (a)

[Title of Court and Cause.]

This cause having heretofore been submitted to the Court for its consideration and decision upon the exceptions of AB, intervenor, to certain specified portions of the report of ————, special master in chancery, regarding a claim presented by said AB to the receiver for [state what], and the court having duly considered the same and being fully advised in the premises, it is now on this —— day of ————, 1897, being a day in the January term, A. D. 1897, of said Circuit Court of the United States for the Southern District of California, ordered that said exceptions be and hereby are sustained, and that the receiver allow the amount of the bill in controversy. It is thereupon ordered, adjudged, and decreed that the receiver appointed in the above-entitled cause be and he hereby is, ordered to pay to said AB the sum of ———, together with the costs of the proceeding had upon the petition of the intervenor.

————,

Judge.

(a) Eq. R. 83.

No. 495.

Order Confirming Report of Master. (a)

[Title of Court and Cause.]

Now, on this —— day of ———, 1895, the application of the ——— Company, ————, complainant in this suit, to confirm the report of ————, Esq., master in chancery of this Court, filed in this cause on ——, the —— day of ———, 18—, and for decree thereon coming on to be heard, the said complainant appearing by ——, —— Company, appearing by its solicitors,

Messrs. ————, and the same having been argued by counsel and considered by the Court, and there being no objection or exceptions to the master's report filed herein, the same is in all things confirmed.

Wherefore, it is ordered, adjudged and considered that the said report of the said master in chancery in this court, ————, Esq., be and the same is in all respects confirmed, and it is ordered that a decree in favor of said complainant and against said defendant, in accordance with the findings made by the said master in said report, be made and entered herein.

————.

Judge.

(a) Eq. R. 83.

Subsection 15.

Proceedings on Sales.

No. 496.

Writ of Venditioni Exponas. (a)

[Title of Court and Cause.]

The President of the United States of America, to Eben Smith, Master in Chancery of the United States, for the District of Washington, Northern Division, Greeting:

Under and by virtue of the decree in this cause, a copy of which is hereto attached, you are hereby commanded to make sale of the properties therein mentioned, set forth and described, and in all respects to follow and obey said decree; and of all your actings therein and thereunder to make due return and report to this court as therein directed.

In advertising said sale you are directed in addition to notice by advertisement as in said decree directed, to cause to be posted a printed notice thereof in not less than three public places in each of the counties in which said properties or any of the same are situated. You are to cause said sale to occur on or after May 16th, 1896.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court for the District of Washingon, this 31st day of March, A. D., 1896, and of our Independence the 120th year.

[United States Circuit Court.]

A. REEVES AYRES,
Clerk U. S. Circuit Court, District of Washington.
By R. M. Hopkins,
Deputy Clerk.

(a) Daniell's Ch. Pr., 5th Am. ed., ch. 29, p. 1264, on Sales by Master.

No. 497.

Master's Notice of Sale. (a)

United States Master's Sale.

[Title of Court and Cause.]

Notice is hereby given that in pursuance and by virtue of a decree in the above-entitled cause, of the above-entitled court ————, Judge, dated ———, 18—, and of a writ venditioni exponas dated ———, 18—, issued from and under the seal of said Court, therein to me directed, I, the undersigned, United States master in chancery for the District of ————, ——— Division, will sell at public sale to the highest bidder, upon the terms hereinafter stated, at (state place of sale), on ———, the —— day of ———, A. D. 18—, at the hour of — o'clock

noon of that day, as an entirety and as one property and not in separate parcels, all and singular the said ——— property hereinafter more specifically described, and all of the right, title, interest and equity of redemption of said ————, in and to the said property described as follows, to wit:

The terms and conditions of this sale are as follows, that is to say: Said sale to be conducted and made according to the rules and practice of and subject to confirmation by this Court, and to satisfy the amounts due and to become due as in said decree provided for principal and interest and the several sums therein allowed to be paid, or so much thereof as such property will bring upon such sale.

The complainant or the committee of the mortgage, etc., named in said decree, or any of the holders of the outstanding bonds, may become the purchaser or purchasers at such sale. The purchaser or purchasers of said property may use and apply in making payment of the purchase price any of the outstanding bonds, secured by said mortgage in said decree mentioned, in the manner and to the extent as in said decree provided; provided, however, that no bid will be received at such sale unless the bidder shall offer to pay in cash, and if the bid is accepted, pay in cash, in gold coin of the United States to the master at the time and place of said sale, a sufficient sum to pay the costs of this suit, together with the costs and expenses of executing this decree and of making said sale, and each and all of the allowances made and provided in said decree to be paid, viz.: Upon completion and confirmation of said sale the master to make, execute, and deliver deed of said properties to purchaser or purchasers, as in said decree provided, the defendant to join in the execution of the same. The receivers to deed to purchaser or

purchasers all property and interests therein, as in said decree provided. Said sale to be freed from all equity of redemption, except as in said decree provided.

Purchaser or purchasers to be let into possession of said mortgaged property so conveyed on production of said deed or deeds.

Dated ———, 18—.

XY,

United States Master in Chancery, District of ————, ——— Division.

————,

Solicitors for Complainant.

(a) Seattle etc. R. Co. v. Union Trust Co., 48 U. S. App. 255; Daniell's Ch. Pr., 5th Am. ed., ch. 29.

No. 498.

Affidavit of Publication of Notice. (a)

[Title of Court and Cause.]

United States of America,
District of ————, } ss.
County of ————.

Affidavit of JD.

JD, of said county, of lawful age, being by me first duly sworn, on his oath says that he is now, and at all times herein mentioned was, a citizen of the State of ————, and resident of the city of ————, in said county and State, and is wholly disinterested in this cause and is competent to testify as a witness therein. That he is now and was at all times herein mentioned, one of the printers and publishers of the ————, which was at all times herein mentioned and now is a daily newspaper published in the city

of ————, in ———— county, State of ————, within said district, and of general circulation in said city of ————, county, district and State, and that a notice of United States master's sale, of which the annexed printed notice is a true, compared, and correct copy, was printed and published in the regular, entire, daily issue of said newspaper, and not in a supplement thereof, on ——— of each and every week, for seven consecutive weeks, immediately prior to and preceding such sale, the first publication of which notice was on ———, the —— day of ———. A. D. 18—, and the last publication of which was on ———, the —— day of ———, A. D. 18—. That said city of ———— and county of ——— is one of the counties in which said property so advertised to be sold was and is in part situated, and the said "————," such daily newspaper, was and is the newspaper in which said notice of said sale was and is, in and by decree of said Court, ordered and directed to be given. That during all the time and times herein mentioned said "————" was regularly distributed to its subscribers, and further affiant says not.

[Notarial Seal] JD.

(a) Daniell's Ch. Pr., Am. ed., ch. 29.

No. 499.

Affidavit of Posting Notices of Sale. (a)

[Title of Court and Cause.]

United States of America,
District of ————, } ss.
County of ————.

SE. of said county, of lawful age, being by me first duly sworn, on his oath says that he is now and at

all times herein mentioned was a citizen of the State of ———— and resident of the city of ———— in said county of ———. That he is disinterested in the said cause and is competent to testify as a witness therein. That on the —— day of ———, A. D. 18—, he securely posted up in three public places in the county of ————, in said State of ————, a printed notice of United States master's sale, of which the printed notice hereto attached is a true and correct copy, as follows, viz. (state where).

That every and all of said notices were so posted and fastened up in conspicuous places and in a manner to attract attention.

That said named counties are the counties in which said properties or some of them mentioned and included in said decree, are situated, and the city of ————, in ———— county, ————, being the city in which said properties are advertised to be sold, and further affiant says not.

SE.

(a) Daniell's Ch. Pr., Am. ed., ch. 29.

No. 500.

Master's Report and Return of Sale. (a)

[Title of Court and Cause.]

To the Honorable Judges of the Circuit Court of the United States, for the District ————, ——— Judicial Circuit, in Equity.

In pursuance and by virtue of a decree of this Court, Hon. ————, Judge, made in the above-entitled cause, and bearing date the —— day of ————, A. D. 18—, and of a writ venditioni exponas, dated ————, 18—, therein issued from and under the seal of said Court, and to me directed,

which said writ is hereto attached and herewith returned, in and by which decree it was, among other things, considered, adjudged, ordered and decreed that all of said mortgaged property in said decree mentioned and referred to and hereinafter more specifically described, should be sold by or under the direction of ————, Esq., special master in chancery of this Court, as an entirety and as one property, and not in separate parcels, and in the manner therein directed, to satisfy the amounts due, and to become due as in said decree stated, for principal and interest on said outstanding bonds, and the several sums therein allowed and decreed to be paid, or so much thereof as such property would bring upon such sale, and that said ————, master aforesaid, make such sale in accordance with the course and practice of this Court, and that at such sale the said complainant, or etc., referred to in the master's report filed herein, or any of the holders of the said outstanding bonds, might become the purchaser or purchasers at such sale; that all of the property ordered to be sold under said decree should be sold at public sale to the highest bidder upon the premises of said defendant to be sold, to wit: (State place of sale.)

That the notice of said sale should be given by said master by advertisement thereof once each week for four successive weeks preceding the date of sale in "————," a daily newspaper of general circulation, published in said city of ————, and that such notice should contain a statement of the time and place of sale, the terms and conditions thereof, as in said decree prescribed, and a description describing briefly the mortgaged property to be sold; that the purchaser or purchasers of said mortgaged property at such sale should be entitled, except as in said de-

cree provided, to use and apply in making payment of the purchase price (as in decree for sale); provided, however, that no bid should be received at such sale unless the bidder should offer to pay in cash, and if the bid should be accepted, should pay in cash, and in gold coin of the United States, to the master at the time and place of said sale a sufficient amount to pay the costs of this suit, together with the costs and expenses of executing the said decree and of making said sale, and the allowances in said decree made to said master in chancery as compenthe said mortgaged property and the premises in said sale, and compensation, etc. (state amounts required by decree to be paid in cash); that the master return the cash proceeds of said sale into the registry of this Court, to be disbursed by the clerk of said Court, as in said decree directed; and further, that if at such sale the said mortgaged property should be sold for cash only, the said master, after the confirmation of such sale, should deposit the entire purchase money into the registry of this Court; that upon the completion and confirmation of any sale made under and in pusuance of said decree, the said ————, master in chancery as aforesaid, should make, execute and deliver to the purchaser or purchasers of said property a good and sufficient deed of conveyance in fee simple, which deed should specify the property so purchased and sold and the sum paid therefor, and that the said defendant, by its proper corporate officers, join in the execution of said deed; that the said ————, master in chancery as aforesaid, make report of his acts and doings under said decree, with all convenient speed after said sale shall have taken place.

And in and by which writ venditioni exponas said master was further directed that in advertising said

sale, in addition to notice by advertisement as in said decree directed, he should cause to be posted a printed notice thereof, in not less than three public places in each of the counties in which said properties or any of the same are situated, and that he should cause said sale to occur on or after ————, 18—.

I, the subscriber, as said United States master in chancery of said Court, residing at the city of ————, ———— county, within said District and State of ————, who was by said Court so ordered to make sale of said properties in said decree mentioned, set forth and described, do respectfully certify and report that I advertised all and singular the said mortgaged property and the premises in said decree and hereinafter more specifically described, mentioned, referred to and contained, at and in front of (place of sale), on ———day, the —— day of ———, A. D. 18—, at the hour of — o'clock noon of that day, as an entirety and as one property, and not in separate parcels, and upon the terms and conditions of sale as in said decree and in said advertisement in said notice of sale set forth for seven weeks successively, as follows, viz., by causing a printed notice thereof to be securely fastened up and posted in not less than three public places in each of the counties in which said properties, or some part or portion of the same, are situated, that is to say [state where], and by causing a true correct copy of such notice to be printed once in each week, that is to say, on ——— day of each and every of said seven weeks successively, immediately prior to and preceding said sale in the "————," a daily newspaper published at the city of ————, in ——— county, State of ————, within said district, and of general circulation in said ————, which said notice contained a statement of the time and place of sale, the terms

and conditions thereof, as in said decree prescribed, and a description, describing briefly the mortgaged property and premises to be sold, as appears in affidavits hereto attached marked Exhibit "A" and Exhibit "B."

And I further return, certify and report that on said ——— day, ——— ——, A. D. 18—, the day on which the said premises were so advertised to be sold as aforesaid, I, as said master, attended at the time and place fixed for said sale, and exposed said properties and premises for sale, at public sale, to the highest bidder, upon the terms and conditions in said decree and in said notice stated, and according to the rules and practice of this Court, and the said properties and premises were then and there by me, as such master, fairly struck off to ————, at and for the sum of one million dollars, the said being the highest best bidder therefor, and that being the highest best sum bidden for the same.

And I do further certify and report that I have executed, acknowledged and delivered to said purchaser the usual master's certificate of purchase of said properties and premises, and return herewith the cash proceeds of said sale, namely, the sum of ————, into the registry of this Court, as directed in and by said decree; that said purchasers elected and do elect to use and apply in making part payment therefor, etc.

And I do further return, certify and report that the moneys arising from said sale are insufficient to pay the said costs and expenses and fees, and all allowances made by the said decree, and I do specify the amount of such deficiency to be, and the same is, the sum of ————.

And I do further return, certify and report that the properties and premises so by me, as said master,

sold, and certificate of purchase of which has by me, as such master, been executed, acknowledged and delivered, were and are described, mentioned and referred to in said decree, and in said certificate so by me executed and delivered as aforesaid, that is to say.

Statement of master's fees, commissions and disbursements on the sale referred to in the preceding report and such other costs as are not included in the taxed bill of costs in this cause:

Compensation of master agreed upon, as inserted in decree .....
Expenses of master to and from ————— in matter of taking proof, etc.....
Costs and expense of posting notice of sale in counties as directed .....
Cost of publication of notice of sale.....
Cost of making copies of schedules.....

————————.

As United States Master in Chancery, Etc.

[Seal United States Master in Chancery.]

(a) Daniell's Ch. Pr., Am. ed., ch. 29.

No. 501.

Motion for Confirmation of Sale. (a)

[Title of Court and Cause.]

Comes now the above-named complainant and moves the Court to confirm the sale which was made by Eben Smith, Esq., U. S. Master in Chancery, District of Washington, Northern Division, in pursuance of the decree rendered in this cause on the 22d day of November, 1895, and of the writ venditioni exponas issued out of this Court March 3, 1896, which said writ and the report of said master of his

actions thereon was filed in this Court on the 20th day of May, 1896.

STRUVE, ALLEN, HUGHES & McMICKEN,
Solicitors for Complainant.

(a) Daniell's Ch. Pr., Am. ed., ch. 29.

No. 502.

Order Confirming Sale. (a)

[Title of Court and Cause.]

The report of Eben Smith, United States Master in Chancery for the District of Washington, Northern Division, having been filed in this Court on the 20th day of May, A. D. 1896, showing that on the 16th day of May, A. D. 1896, at the hour of twelve o'clock noon of that day, he sold at public auction to a Committee of the First Mortgage Bondholders of the said defendant, Seattle, Lake Shore & Eastern Railway Company, composed of Morton S. Paton, H. O. Armour, E. D. Christian and J. D. Smith, of New York City, for the sum of ———— dollars, all the property of the said defendant Railway Company specifically mentioned and described in the bill or complaint in the report of the master filed herein, on the 3d day of October, 1895, and in the decree of Court in the above-entitled cause; and

Afterward, on the 20th day of May, A. D. 1896, written objections having been filed by and on behalf of A. B and C, claiming themselves to be creditors of the said defendant, the Seattle, Lake Shore & Eastern Railway Company, and of the receivers thereof; and

Afterwards, on the 1st day of June, 1896, the said defendant, Seattle, Lake Shore & Eastern Railway Company, appearing by its attorneys, Ashton & Chap-

man, and having filed its written objections to the report of the said master and the confirmation of the said sale; and

Afterwards, on the 8th day of June, 1896, all the objections of each of the aforesaid objectors to the report of said master and to the confirmation of said sale coming on for hearing, complainant being represented by Messrs. Struve, Allen, Hughes & McMicken, its solicitors, and the said defendant appearing by its solicitors, Messrs. Ashton & Chapman, and A. B and C, all appearing by their solicitors, etc., and the said objections being each duly presented and argued by the counsel for the respective parties in interest, the same were by the Court taken under advisement; and

Now, on this 9th day of June, A. D. 1896, the Court having fully considered the said objections and the arguments of counsel thereon, and it appearing to the Court that the said sale was duly and regularly made by said master in accordance with law and the course and practice of this Court, and in the manner provided in the said decree, the Court being duly advised in the premises, it is therefore ordered by the Court that the said objections, and all of them, be and the same are hereby overruled, to which order of the Court the said several parties objecting do each except, and their exceptions are allowed.

Wherefore it is by the Court ordered, adjudged, and decreed that the said report of the said master and the said sale by him made as set forth in his said report, be, and the same is, hereby approved and confirmed; and it is further ordered, adjudged, and decreed that proper and legal conveyances of all of the said property so sold are hereby directed to be executed to the said purchasers in the manner and by the parties provided for by the decree of this Court made and entered herein on the 22d day of Novem-

ber, A. D. 1896, to which said orders of the Court the said several parties objecting, do each except, and their exceptions are allowed.

Done in open Court this 9th day of June, A. D. 1896.

C. H. HANFORD,
Judge.

(a) Daniell's Ch. Pr., Am. ed., ch. 29.

No. 503.

Notice Claiming Exemption of Certain Property From Sale.

[Title of Court and Cause.]

To the Honorable Eben Smith, United States Master in Chancery, District of Washington, Northern Division:

You will please take notice, that the defendant in this cause claims and asserts that the mortgage being foreclosed herein, does not cover two thousand five hundred shares of the capital stock of the Union Depot Company of Spokane Falls, Washington, which stock is particularly described in Schedule "4E," annexed to Exhibit Four of your report in this cause, the said stock being mentioned and described in your notice of sale in this cause dated April 1st, 1896, nor does said mortgage cover the leasehold estate for the period of ninety-nine years in and to certain property leased by said depot company, and situate in or near the city of Spokane, in said State, which leasehold estate is also described in the schedule above referred to.

Defendant contends and asserts that under the terms of said mortgage, and under the law, said stock and said leasehold estate, is not included therein, and should not be sold by you pursuant to the decree

herein and said notice of sale, and you are hereby requested to make due publication of this notice at the time and place of sale, in order that any purchaser, or purchasers, at said sale may be duly informed of the same.

Respectfully,

SEATTLE, LAKE SHORE & EASTERN RAILWAY COMPANY.

By ASHTON & CHAPMAN,
Its Solicitors.

No. 504.

Objections to Confirmation of Sale. (a)

[Title of Court and Cause.]

Comes now the defendant herein and excepts to the master's report and return of sale herein filed in this Court on the —— day of ———, 18—, and objects to the confirmation of said sale upon the following grounds:

First.

The sale and the report thereof includes property not covered by the mortgage in this cause, and this Court was without authority or power to decree the foreclosure of said mortgage against such property and without jurisdiction to order and direct the sale thereof, the property herein referred to being, etc.,

Second.

That on the date of said sale and prior to the commencement thereof the defendant herein by its counsel, served upon the master conducting said sale a notice, the original of which was filed in this Court on the —— day of ———, 18—, and which notice stated that the defendant was the owner of said ———; that the same was not covered by the mortgage being fore-

closed in this action and requested the said master to make due publication of said notice at the time and place of sale in order that any purchaser or purchasers at said sale might be duly informed thereof. That the master failed and neglected to so publish said notice at the time and place of sale, but permitted counsel for this defendant to do so in the presence of the purchasers and prior to the purchase thereof. That said notice was thereafter, and after the same had been read at said sale, by counsel for defendant, redelivered to said master and the master prior to the report herein was requested to return the said notice with his report with statement therein showing that the same had been read at the time and place of sale. That said master failed and neglected to return said notice with his report of sale or in any manner to refer to said notice in his report. Whereupon the defendant caused the original of this notice to be filed in this Court on the —— inst., as aforesaid.

Third.

That the total amount of principal, interest, costs, allowances to officers of this Court, and disbursements to be made at said sale was the sum of ————. That the amount bid at said sale was but ————, of which sum but ———— was paid in cash, the balance of said bid, ————, being paid with the bonds secured by the mortgage being foreclosed in this action, and pursuant to the terms of said mortgage, leaving a deficiency judgment against this defendant amounting to the sum of ————, and the defendant doth here aver that said purchase price was entirely inadequate and not more than one-tenth or one-twentieth of the full value of the property sold, estimating the same upon a fair

and reasonable basis; that said sale was so conducted that the greater amount could not be realized therefrom, from the fact that the property was sold together in bulk, whereas much of the property consists of, etc., which should have been sold separately. (State any other objections.)

Fifth.

That the Court is without jurisdiction or power to confirm said sale for the reason that this case has been duly and regularly appealed to the United States Circuit Court of Appeals for the ——— Judicial Circuit.

Sixth.

That the Court is without jurisdiction or power to confirm said sale for the reason that the allegations in the bill of complaint in this action are insufficient to vest this Court with jurisdiction over this defendant or of the properties involved in this action and sold by said master as aforesaid.

Seventh.

Defendant objects to the confirmation of said sale and to the report of said master from the fact that said master was without power or authority to make the same by or on account of the want of jurisdiction over the defendant or its properties and on account of the allegations in the bill of complaint herein being insufficient to confer jurisdiction upon this Court. And for the further reason that the mortgage being foreclosed in this action and for the foreclosure of which the bill of complaint was drawn and filed in this court, and upon which the decree and order of sale herein are based, is insufficient to cover a large

amount of personal property involved in the notice of sale and sold by said master, as appears from his report herein, which personal property is not attached to ————, so as to form a part or parcel of the real estate composing the same from the fact that said mortgage is not executed in manner and form as prescribed by the statutes of the State of ————, pertaining to the execution of mortgages covering personal property.

Wherefore defendant prays that said sale be not confirmed and that the same shall be vacated and held for naught.

————,

Solicitors for defendant.

(a) Daniell's Ch. Pr., 5th Am. ed., ch. 29.

No. 505.

Order Appointing Master to Execute Deed. (a)

[Title of Court and Cause.]

This cause coming on to be heard on this —— day of ———, 18—, on the motion of said complainant heretofore filed herein for the appointment of a commissioner to execute a deed for and on behalf of the XY Company to CD and EF, who were the purchasers at the said sale made by the master of this Court of the properties of said defendant under the final decree made in this cause, and it appearing to the satisfaction of the Court that the said defendant, XY Company, has failed and refused to comply with the order of this Court requiring it, by its proper officers, to join in the execution of the deed of conveyance to be made by Eben Smith, master in chancery of the property sold under said decree:

It is therefore now here ordered that Eben Smith be, and he is hereby appointed, a special master to

execute the deed for and on behalf of the said XY Company, conveying to said purchasers above named all the right, title, and interest of said company in and to all of the property mentioned and described in said decree rendered in this cause, and thereby authorized to be sold, and that the said Eben Smith, special master as aforesaid, be authorized and directed to execute, acknowledge and deliver the said deed of conveyance to the purchasers above mentioned.

————,
Judge.

(a) Acts of 1 Wm. IV, ch. 36; Eq. R. 90; see Foster's Fed. Proc., sec. 349; Desty's Fed. Proc., sec. 435.

No. 506.

Master's Report of Execution of Deed. (a)

[Title of Court and Cause.]

To the Circuit Court of the United States, District of ————, ———— Division. Hon. ————, Judge.

In pursuance and by virtue of an order of the above-entitled Court, dated ——— ——, 18—, in and by which it was ordered that ———— be, and he was thereby, appointed a special master to execute the deed for and on behalf of the XY Co., conveying to said purchasers (in said order named, to wit—who were the purchasers at the said sale made by the master of this Court of the properties of said defendant under the final decree in this cause) all the right, title and interest of said ———— in and to all of the property mentioned and described in said decree rendered in this cause, and thereby authorized to be sold, and that said ————, special master as

aforesaid, be and he was authorized and directed to execute, acknowledge and deliver the said deed of conveyance to the purchasers above mentioned.

I, the undersigned special master so as aforesaid appointed, residing at the city of ————, ——— county, ————, do hereby respectfully certify and report that, as such special master, I have executed and acknowledged said deed for and on behalf of the said XY Company to said purchasers above named all the right, title and interest of said company of, in and to all of the property mentioned and described in said decree rendered in this cause and thereby authorized to be sold, and here and now present the same to this Honorable Court for examination and approval.

All which is respectfully submitted.

Dated ————, ———, 18—.

[Seal] ————,

As Special Master as Aforesaid.

(a) See notes to Form 505.

Subsection 16.

Miscellaneous.

No. 507.

Praecipe for Subpoena. (a)

[Title of Cause.]

————, Esq., Clerk Circuit Court, ——— District of ———.

You will please issue a subpoena to the defendant X Y, in the above-entitled cause, returnable on the ———.

Dated ———, 18——.

————,

Solicitor for Complainant.

(a) Eq. R. 7, 11. (Address.)

No. 508.

Subpoena ad Respondendum. (a)

United States of America.

In the Circuit Court of the United States,——— Circuit, ——— District of ———.

In Equity.

The President of the United States of America, Greeting, To R S, V W, and X Y.

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in ————, on the —— day of ———, A. D. 18——, to answer a bill of complaint exhibited against you in said court by A B, who is a citizen of the State of ————, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this —— day of ———, in the year of our Lord one thousand eight hundred and ——, and of our Independence the ——th.

[Seal] ————,
Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, U. S.—You are hereby commanded to enter your appearance in the above suit, on or before the first Monday of August next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

————,
Clerk.

(a) Eq. R. 7, 11, 12.

No. 509.

Marshal's Return. (a)

United States Marshal's Office,
———District of ———.

I hereby certify that I received the within writ on the —— day of ———, 18——, and personally served the same on the —— day of ———, 18——, on said ————, by delivering to and leaving with said ————, said defendants named therein, at the city ———— of ————, in said district, an attested copy thereof.

————, ———, 18—.

————,
U. S. Marshal.
By ————,
Deputy.

(a) Eq. R. 13.

No. 510.

Alias Subpœna ad Respondendum. (a)

United States of America.

Circuit Court of the United States, —— Judicial Circuit, —— District of ————.

In Equity.

The President of the United States of America, Greeting, to X Y.

You are hereby, as you have heretofore been, commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in ————, on the —— day of ———, A. D. 18—, to answer a bill of complaint exhibited against you in said court by ————, who is a citizen of the State of ————, and to do and receive what the said

Court shall have considered in that behalf. And this you are not to omit, under penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this —— day of ———, in the year of our Lord one thousand eight hundred and ——, and of our Independence the 120th.

[Seal] ————,
Clerk.

By ————,
Deputy Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.—You are hereby required to enter your appearance in the above suit, on or before the first —— of ——— next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

————,
Clerk.

By ————,
Deputy Clerk.

[Endorsed]:

United States Marshal's Office,
———District of ———.

I hereby certify that I received the within writ on the —— day of ———, 18—, and personally served the same on the —— day of ———, 18—, on ————, by delivering to and leaving with ————, said defendant named therein, at the city

of ————, in said district, an attested copy thereof.

————, ———, 18—.

————,
U. S. Marshal.
By ————.
Deputy.

(a) Eq. R. 14, 15.

No. 511.

Appearance of Defendant. (a)

[Title of Court and Cause.]

To the Clerk:

We hereby enter our appearance as solicitors and counsel for defendant in the above-entitled suit.

Dated ——— —, 18—.

————,
————.
Solicitors and Counsel for Defendant.

(a) Eq. R. 17.

No. 512.

Praecipe for Appearance of Defendant. (a)

[Title of Court and Cause.]

To the Clerk of the above-entitled Court:

You will please enter our appearance as solicitors for defendant in the above-entitled cause.

Dated ———. (Signed) ————.

(a) Eq. R. 17.

No. 513.

Praecipe for Default. (a)

[Title of Court and Cause.]

To ————, Clerk.

You will please enter the default of the defendant

herein for want of answer in the above-entitled cause.

————,
Solicitor for Plaintiff.

(a) Eq. R. 18, 19.

No. 514.

Petition for Leave to File Supplemental Bill. (a)

[Title of Court and Cause.]

To the Honorable, the Judges of the United States Circuit Court for the ——— District of ————, in the ——— Circuit, Sitting in Equity:

The petition of A B, the above complainant, respectfully shows that on or about the —— day of ———, 18——, your petitioner filed its bill in this honorable Court against X Y, for the purpose of foreclosing a mortgage upon the property of said ————, defendant, for an injunction and receiver, and for other relief.

And your petitioner further shows that the said X Y appeared to the said bill. That since the said appearance of said defendant was entered additional interest has became due on the [bonds secured by the mortgage sought by said bill to be foreclosed], and the defendant has made default in the payment of interest upon bonds executed by it and secured by another mortgage to M N, and the said M N claims to have an interest in, or lien upon, the property and premises covered by the mortgage sought to be foreclosed herein; wherefore your petitioner is advised that it is necessary to bring the said M N before this Court as a party defendant to this suit.

Your petitioner therefore prays that leave may be granted to it to file an amended and supplemental

bill against the said X Y, defendant, and against the said M N, setting out the amount of interest that has become due, since the filing of the original bill herein, upon the bonds secured by the mortgage sought to be foreclosed hereby, and for the purpose of making the said M N a party defendant to this suit, with proper and apt words to charge it as such, and with such prayer for relief as may be proper, and for such other and further relief as to your Honors shall seem just and equitable.

(a) Eq. R. 57, 58.

No. 515.

Notice of Application for Leave to File Bill for Appointment of Receiver. (a)

[Title of Court and Cause.]

To said ————, and to ————, its Solicitor.

Please take notice that at the hour of ten o'clock, in the forenoon, of the —— day of ———, 18——, or as soon thereafter as counsel can be heard, the said plaintiff,————, will apply to the said Court for permission to file a bill of complaint therein, a copy of which is hereto attached, marked "Exhibit A," and ask of said Court the appointment of a receiver in said suit, and the extension of the receivership of ————, therein, which application will be based upon the affidavit, a copy of which is attached hereto, marked "Exhibit B."

————,

Solicitors for Plaintiff.

(a) Foster's Fed. Proc., sec. 241.

No. 516.

Affidavit in Support of Application for Leave to File Bill for Appointment of Receiver. (a)

State of ————,
City and County of ————. } ss.

Affidavit of M P.

M P, being first duly sworn, on his oath deposes and says, that on the —— day of ———, 18——, the ———— Railway Company, then being a corporation duly incorporated under the laws of the territory of ————, duly executed and delivered to the U T Company, then a corporation duly incorporated under the laws of the State of ————, its certain mortgage, by which it conveyed the property therein described, to secure the payment of certain bonds of said railway company therein described, at the time and manner therein set forth, which said mortgage has been duly recorded in ————, ————, in vol. ————, in the mortgage records of said county and a true copy of which said mortgage is hereto attached, marked Exhibit "A."

That this affiant is the owner and holder of ——— ——— bonds executed and delivered by the said railway company, and the payment of which is secured by said mortgage.

That said railway company duly executed and delivered of its said bonds in all ———— bonds to said trust company, and that said railway company afterward caused to be redeemed and canceled ———— of said —— bonds so delivered, and the remaining bonds are now outstanding in the hands of various persons and bodies corporate, who purchased them and hold the same in good faith from said railway company after the same had been duly certified by

said ——— Trust Company at the request of said railway company.

That the said railway company on the —— day of ———, made default in the payment of the semi-annual interest of said bonds, which was then due and payable on said day according to the terms of said bonds, after the interest due on said day, and as represented by coupons attached to each of said bonds, had been duly demanded of said railway company at its office or agency in the city of ——— ———, according to the terms of said bonds, and that the same still remains due and unpaid.

That thereafter the owners and holders of ——— ——— of said bonds, being more than five-sixths of the entire issue of said bonds, subscribed a certain agreement for the purpose of enforcing and protecting their rights under said bonds and mortgage, whereby they agreed with each other and the committee of bondholders thereby appointed and hereafter referred to, and among other things, that the said committee should consist of ———— and this affiant, and that said committee should have all the powers and authority particularly set forth in said agreement, a true copy of which is hereto attached, marked Exhibit "B."

The said affiant was afterward elected as, and he is now, the chairman of said committee.

That said committee afterward requested said trust company to foreclose said mortgage for the non-payment of said unpaid interest due on said bonds.

That at a regular meeting of said committee held on the —— day of ———, 18——, all members being present, a resolution was duly passed recommending the appointment of ————, being a disinterested, suitable, and competent person, as a receiver in the

suit to be brought for the foreclosure of said mortgage, and that this affiant, as chairman, should request the said trust company, as plaintiff, to nominate to the Court the said ————, as receiver, if the Court should grant the prayer of the complaint in that behalf.

(Signed) M. P.

(a) Foster's Fed. Proc., secs. 240, 241.

No. 517.

Petition for the Appointment of a Guardian Ad Litem on Petition of the Plaintiff. (a)

[Title of Court and Cause.]

(Commencement. Form No. 514.)

* * * * Showeth:

That the bill in this suit was filed against the defendant to foreclose a mortgage executed by the father of said defendant, who is now deceased, in his lifetime, to your petitioner, and praying for a sale of the mortgaged premises, and that the said defendant claims an interest in the said premises as heir of her father, and said defendant X Y resides in the town of ————, and is, as your petitioner is informed and believes, an infant under the age of twenty-one years, viz., of the age of fifteen years and upwards; and that on the —— day of ———, process in this suit was duly served on the said X Y requiring her to appear and answer the said bill, returnable on the —— day of ———. And your petitioner further shows that, although more than —— days have elapsed since the day of appearance named in said process, no guardian ad litem has yet been appointed for such infant or applied for by her, or by any per-

son on her behalf, to the knowledge or belief of your petitioner.

Your petitioner therefore prays that [M N, the clerk of this court] may be appointed guardian ad litem of such infant defendant, to appear and defend this suit on her behalf.

And, etc.

(a) Desty's Fed. Proc., sec. 84; Eq. R. 87.

No. 518.

Affidavit for Suit in Forma Pauperis. (a)

[Title of Court and Cause.]

A B, of ————, being duly sworn, makes oath and says:

First. That he is a citizen of the United States and of this State of ————.

Second. That he is the plaintiff named in a bill of complaint, this day filed in this honorable Court, wherein X Y is defendant, and that by said bill this deponent seeks (state briefly the alleged cause of action.)

Third. That this deponent believes that he is entitled to the redress sought to be obtained by said bill, and has a good cause of action thereunder.

Fourth. That by reason of his poverty this deponent is unable to pay or secure the costs of prosecuting said suit, and that there is no person interested by contract or otherwise in the said cause of action, or entitled to share in the recovery sought thereunder who is able to pay or secure said costs.

Fifth. This deponent therefore prays that he may have leave to prosecute said suit in forma pauperis, pursuant to the statute in that case made and provided.

A B.

Sworn this —— day of ———, 18——, before me.

———,

(a) Desty's Fed. Proc., sec. 335: Boyle v. G. N. R. Co., 63 Fed. Rep. 539.

The above affidavit can be adapted with little change to that referred to in Desty's Fed. Proc., sec. 336.

No. 519.

Petition of a Defendant to be Admitted to Defend in Forma Pauperis. (a)

[Title, etc.]

Showeth:

That your petitioner has been served with copy of the bill in this cause; that your petitioner is not worth five dollars in all the world, his wearing apparel and the subject-matter of this suit only excepted, and by reason of his poverty is unable to make his defense thereto, if not permitted to defend in forma pauperis.

Your petitioner therefore prays, that he may be permitted to defend this suit in forma pauperis and that counsel and solicitor may be assigned to him for that purpose.

(a) Daniell's Ch. Pr., 5th ed., p. 155; Ferguson v. Dent, 15 Fed. Rep. 771.

No. 520.

Petition for a Rehearing of Case. (a)

[Title of Court and Cause.]

The petition of X Y, the above-named defendant, respectfully shows:

That on or about the —— day of ———, 18——, the complainant herein exhibited his bill of complaint in

this honorable court against your orator and other defendants, and thereby set forth that he is the owner of the title to that certain land and premises, and every part thereof, known as ———— and which is more fully described in said complaint, and to which your orator respectfully refers for a fuller description. The said complainant in his prayer to said bill of complaint prayed that a decree be entered quieting title against your orator and the rest of said defendants.

Your orator, ————, being duly served with process for that purpose, appeared and put in its second amended answer to the said bill to the effect that (state effect of the answer).

That the said complainant duly replied to said second amended answer, and issue having been joined, and witnesses examined, and the proofs closed, after argument thereon before your Honor a decree was pronounced upon the —— day of ——— 18—, whereby your Honor decreed that the complainant's title to the premises was valid and effectual as against your orator, after which said decree was passed and entered, and which said decree your orator humbly insists is erroneous and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections. Inasmuch as it appears by your orator's answer on file herein—First (state alleged errors), and the said facts appearing of record, and being admitted, no decree ought to have been made or grounded thereon, but the said bill ought to have been dismissed for reasons aforesaid. In consideration whereof, and inasmuch as such errors and imperfections appear in the record of the case and in the body of the said decree, and there is no proof to uphold plaintiff's alleged claim of title to

the premises described in said decree, your orator hopes that the said decree will be reversed and set aside and no further proceedings had thereon. To the end, therefore, that the said complainant may, if he can, show cause why your orator should not have the relief hereby prayed, and that for the reasons and under the circumstances aforesaid, the said decree may be reviewed, reversed, and set aside and no further proceedings taken thereon, and your orator permitted to remain in the undisturbed possession and enjoyment of said property. To the end that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the Court to grant him due process by an order requiring the said complainant to show cause why the petition of your orator should not be granted, and your petitioner will ever pray.

C. D.,
Petitioner.

_____,
Solicitor for Petitioner.

(a) Eq. R. 88.

No. 521.

Memorandum of Costs and Disbursements. (a)

[Title of Court and Cause.]

Witness Fees.

(b) Attendance in court on trial, and mileage coming and going:

(c) Henry Palmer, 2 days, mileage 146 miles	$10 30
John Noyes, 2 days, mileage 146 miles,	10 30
Al. Noddin, 2 days, mileage 146 miles,	10 30
D. S. Scott, 2 days, mileage 146 miles,	10 30
David Brennan, 2 days, mileage 146 miles,	10 30

J. C. E. Barker, 2 days, mileage 196 miles, 12 80
Jno. Garforth, 2 days, mileage 146 miles, 10 30
Jno. McLaggin, 2 days, mileage 146 miles, 10 30
T. J. Moffit, 2 days, mileage 146 miles, 10 30
W. F. Cobban, 2 days, mileage 146 miles, 10 30
C. H. Hand, 2 days, mileage 146 miles. 10 30
(d) Marshal's fees 5 00
(e) Clerk's fees, 23 05
(b) Docket fee, 20 00
(b) To attending taking of 12 depositions, each $2 50 30 00
To making assays of ores from ground in controversy for use on trial. 48 00
(b) To paid T. T. Baker making survey map of ground in controversy for use on trial, 25 00
To paid register and receiver of land office for filing of adverse claim and protest, 10 00
To paid entry fee in State court, 5 00
(b) To bill I. Hamburger, stenographer, work in court, 10 00
(b) To bill I. Hamburger, transcript of testimony taken on trial, 62 40

United States of America.

District of ————— } ss.
County of ————— }

(b)

MN being duly sworn, deposes and says, that he is one of the solicitors for the plaintiff in the above-entitled cause, and as such is better informed relative to the above costs and disbursements than the said plaintiff. That the items in the above memorandum contained are correct, to the best of this deponent's knowledge and belief, and that the said disburse-

ments have been necessarily incurred in the said cause.

M. N.

Subscribed and sworn to before me this ——day of ———, 18—.

[Seal] ————,
Notary Public, etc.

(a) As to costs generally, see Desty's Fed. Proc., secs. 291 et seq., 496-517.
(b) Desty's Fed. Proc., sec. 292.
(c) Idem, sec. 323.
(d) Idem, sec. 297.
(e) Idem, sec. 296.

No. 522.

Objections to Cost Bill. (a)

[Title of Court and Cause.]

The attendance upon taking depositions is objected to for the reason that the statute means each attendance upon the taking of the deposition of one or more witnesses.

Charges for assays objected to as not legal costs.

Charges for maps objected to as not legal costs.

Charges for stenographic transcripts objected to as not legal costs.

Dated ————.

————,
Solicitor for defendant.

(a) Desty's Fed. Proc., secs. 292, 323, 514; Circuit Ct. Rules, 17, 18, 19.

No. 523.

Clerk's Ruling on Memorandum of Costs.

[Title of Court and Cause.]

In the matter of taxation of costs.

1. Objection is made by defendants to attending taking twelve depositions, each $2.50; under section 824, Rev. Stats., this is allowable and the objection is overruled.

Broyles et al. v. Buck, Clerk, 37 Fed. 137.
Ferguson et al. v. Dent, 46 Fed. 88.

2. Objection to charge for assays made.

I do not think this a lawful charge, and will disallow the same, and sustain defendants' objection thereto.

"These were not incurred under any action of the Court, but by the party in the preparation and presentation of his own side of the case, the items were properly disallowed." See the William Branfort, 52 Fed. p. 395. In speaking of Experts — these assays were made to assist the expert in this case to testify, and I do not believe the same is a proper charge.

3. Objection for maps.

I believe this a lawful charge and will allow the same, and overrule defendants' objection thereto.

Lillenthal v. Southern Pacific Ry. Co., 61 Fed. 622.

4. Objection to charge for stenographic transcript.

As this charge was for a copy furnished to the counsel for plaintiff and not for filing in court, I will disallow the same.

See 52 Fed. p. 395, The William Branfort.

"This was simply for convenience, and not a copy necessarily obtained for use on the trial." The item was properly rejected.

Also Atwood v. Jacques, 63 Fed. p. 561.

"As these copies were evidently for the use of respondent or his counsel, they are not chargeable as costs in the case."

5. Objection as to costs in State court:

Objection to allowance of said costs is overruled except as to item "To paid register and receiver of land office for filing of adverse claim and protest," this was not a cost, was not incurred in the State court, and I will disallow the same.

I therefore tax the costs in this case as follows:

Witness fees	$115 80
Marshal's fees	5 00
Clerk's fees	23 05
Docket fee	20 00
To attending taking of 12 depositions at $2.50	30 00
For map for use at trial	25 00
To paid entry fee in State court	5 00
To I. Hamburger, stenographer, work in court	10 00
Total	$233 85

I disallow:

To making assays of ore	$48 00
Paid register and receiver on protest	10 00
To bill of I. Hamburger, transcript	62 40
Total	$120 40

Respectfully submitted,

_____,

Clerk.

Dated ———, 18—,

No. 524.

Motion by Plaintiff to Retax Costs. (a)

[Title of Court and Cause.]

Take notice that the plaintiff in the above-entitled action under rule 19 of the Rules of the Circuit Court

for the Ninth Circuit, will and does hereby move that the taxation of costs in the above cause made by the clerk of said court on ———, 18 —, be retaxed and does hereby appeal from the rulings of said clerk on such taxation in disallowing the following items of plaintiff's memorandum of costs, to wit:

First. To making assays of ores from the ground in controversy for use on the trial, $48.00.

Second. To paid register and receiver of land office for filing of adverse claim and protest, $10.00.

Third. To bill of I. Hamburger, transcript of testimony taken on trial, $62.40.

————, ———, 18—.

M. N.
Plaintiff's Attorney.

To ————, clerk of said court, and OP, attorney for defendant.

(a) C. C. R. (ninth circuit) 19.

No. 525.

Points on Appeal from Clerk's Taxation. (a)

[Title of Court and Cause.]

On its appeal from the clerk's taxation of costs in the above cause the plantiff submits the following points:

I.

The clerk disallowed the item of $48.00 paid for assays of ores from the ground in controversy for use on the trial. The action was one involving the construction of U. S. Rev. Stats., sec. 2333, as to what constitutes a "known lode." To ascertain that the value of the lead matter became an important point. It became indispensable to ascertain whether the lode was

such as would justify exploitation. This could only be accomplished by assays; they could only be obtained by paying for them, hence the charge is proper.

52 Fed. 395, cited by the clerk to sustain his ruling is wholly inapplicable.

II.

The transcript of testimony taken on the trial was ordered by his Honor, Judge ———, each party paying one-half thereof. The charge disallowed is for the plaintiff's one-half. This transcript was necessary to enable the Judge to rule on the case—in effect it was a transcript made for the purpose of the trial and is filed in the case. The clerk is in error in supposing it was made for convenience of counsel. The charge is a proper one and seems to be contemplated by rule 67.

III.

The clerk disallowed the item of $10 paid the land office on filing protest against defendants' application for patent. This is not a court cost of the State court, and the clerk is mistaken in that regard. The action is one founded on U. S. Rev. Stats., secs. 2325, 2326. Under these sections a protest must be filed — the land office fees must be paid therefor, consequently the charge is a proper one. If one can collect a clerk's fee on beginning a suit it would seem he should be allowed a fee that had to be paid before this suit could be brought.

It is respectfully submitted all the charges disallowed were proper, and that the clerk's action should be overruled.

————, ———, 18 —.

M. N.
Plaintiff's Attorney.

(a) C. C. R. (Ninth Circuit) 19.

No. 526.

Notice of Appeal by Defendant from Taxation.

[Title of Court and Cause.]

Please take notice that the defendants in the above entitled action hereby appeal from the rulings of the clerk of said court on the taxation of costs in the above entitled case made ——, 18—, in allowing the following items of plaintiff's costs in said action, and will on ————, 18 —, or so soon thereafter as counsel may be heard, at 10 o'clock A. M. at the court-house in ————, move said court to retax costs, for the following reasons:

1. Said memorandum of costs should be disallowed because not filed in accordance with rule 17 of said court.

2. The mileage of the witnesses D. S. Scott, D. Brennan, J. C. E. Barker, J. McLaggin, and R. M. Cobban, because they were not subpoenaed as witnesses and attended voluntarily and their mileage for travel is not proper costs under the law.

3. The bill of T. T. Baker for survey and map of ground is not an item of costs allowed by law.

4. The entry fee of $5 in State Court is not an item of costs allowed by law.

5. The bill of I. Hamburger for stenographic work in court is not legal costs. It was performed by order of the Court. This is an equity case and costs are discretionary, and in the exercise of its discretion under the circumstances of this action, should be disallowed by the Court.

6. As a jury was waived in this action the docket

fee allowed should be $10 instead of $20 as allowed by the clerk.

————, 18—. ————,

Solicitor for Defendants.

To ————, clerk of said court, and to ————, solicitors for plaintiff.

No. 527.

Enrollment. (a)

[Title of Court and Cause.]

This cause having been appealed to the Circuit Court of Appeals for the ——— Judicial Circuit, ———— District of ————, and after being duly heard in said Circuit Court, the judgment of the lower court was reversed, and the bill of complaint herein ordered dismissed, the mandate of said Circuit Court of Appeals being annexed hereto: that on the ——— day of ———, A. D. 18—, an order was made in pursuance of said order, and on the same day a decree dismissing the bill of complaint herein was duly filed and entered, which is hereto annexed.

(a) Eq. R. 85.

Section II.

PUBLIC LANDS.

No. 528.

Complaint (Public Lands). (a)

[Title of Court and Cause.]

To the Honorable, etc.

The California Redwood Company, a corporation, having its principal place of business in the city and county of San Francisco, in the State of California, and being a citizen of the State, brings this its bill

against William Mahan, a citizen of the State of California, residing in the county of Humboldt in said State, and therefore your orator complains and says:

I.

That at all of the times in this complaint mentioned the plaintiff was, and now is, a corporation, organized and existing under and by virtue of the laws of the State of California, and having its principal place of business and office in the city and county of San Francisco, in said State. That at all of the said times the lands hereinafter described were, and now are, unfit for cultivation, and valuable chiefly for the timber standing and growing thereon, and had no valuable deposit of gold, silver, cinnabar, copper, or coal, and that during the year 1883 said land was uninhabited, and contained no mining or other improvements.

II.

That on or about the second day of January, 1883, one John C. Johnson who was then and there a citizen of the United States over the age of twenty-one years, desiring to avail himself of the provisions of the act of Congress entitled "An act for the sale of timber land in the States of California, Oregon, Nevada, and in Washington Territory," approved June 3, 1878, did file with the register of the United States land office of the Humboldt Land District, at the town of Eureka, in said county of Humboldt, a written statement in duplicate, wherein he designated by legal subdivisions the particular tract of land he desired to purchase, that is to say, the southwest quarter of section 15, township eight, north of range one east, Humboldt base and meridian, containing 160 acres, according to the public surveys of the gov-

ernment of the United States; which written statement set forth that said land was then unfit for cultivation, and was valuable chiefly for its timber; that it was uninhabited, and had no mining or other improvements, or any valuable deposit of gold, silver, cinnabar, copper, or coal. Said written statement further set forth that said Johnson had made no other application under said act of Congress, and that he did not apply to purchase said land on speculation, but in good faith, to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which he might acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except himself. Said statement in duplicate was then and there signed by said Johnson, and was verified by his oath before the register of said United States land office of Humboldt Land District (in which district the said land was and is situate), and one of said duplicate statements, signed and verified by said applicant as aforesaid, was by the receiver of said land office transmitted forthwith to the general land office at Washington in the District of Columbia. Upon the filing of said statement, the said register of said land office did forthwith post in his office, for the period of sixty days, a notice of said application, embracing a description of said land by legal subdivisions, and did furnish to said applicant a copy of said notice, which was thereupon published at the expense of said applicant for a like period of sixty days in a newspaper printed and published in said town of Eureka, in Humboldt county, which newspaper was then and there the newspaper published nearest to the location of said lands. That

on the twenty-first day of March, 1883, and after said copy of said statement had been posted for the full period of sixty days, and had likewise been published as aforesaid for the full period of sixty days, no claim adverse to said claim of said applicant had been filed in said land office; and the said applicant did then and there furnish to the said register of said land office satisfactory evidence (which evidence was satisfactory to the said register) that said notice of said application, prepared by the register, had been duly published for the period of sixty days in the newspaper published nearest to the location of said lands, and further establishing that the said land was valuable chiefly for timber, and was unfit for cultivation, and was not included within military, Indian or other reservations of the United States, and had not been offered at public sale according to law prior to June 3, 1878, and that it was subject to entry under said act of Congress, and was uninhabited and without improvements, and that it contained no valuable deposits of gold, silver, cinnabar, copper, or coal, and that all the averments in said written statement contained were true. And thereupon the said John C. Johnson did pay to the receiver of said land office of the Humboldt Land District the purchase money of said land, to-wit, the sum of two and one-half dollars per acre, in lawful money of the United States, together with all fees of the register and receiver of said land office, as provided for in the case of mining entries in the 12th section of the act of Congress approved May 10, 1872; and thereupon the said applicant was by said register and receiver permitted to enter, and he did enter, the said tract of land hereinbefore described, and the said receiver did execute and deliver to him a certificate of pur-

chase of said land substantially in the words and figures following, to-wit:

No. 5118. Receiver's Office at Humboldt, Cala.
Duplicate.

March 21, 1883.

Received from John C. Johnson, of Humboldt county, California, the sum of four hundred (400) dollars and —— cents, being in full for the southwest quarter of section No. fifteen (15), in township No. eight (8), north of range No. one (1) east, H. M., containing one hundred and sixty (160) acres and 00-100, at $2.50 per acre. Act June 3, 1878. Timber.

Recd. R. and R. fees for entry, $10.

(Signed) SOLOMON COOPER, Receiver.

$400.00

That said Solomon Cooper was then and there the duly appointed, commissioned, and qualified receiver of said land office of the Humboldt Land District. That thereafter, and on or about the said twenty-first day of March, 1883, said register and receiver did transmit to the general land office at Washington all of the testimony and papers in the matter of said application by said Johnson, including the duplicate of said certificate of purchase; and said papers and testimony were received and placed on file in the general land office in the month of March or April, 1883. That thereafter, and on the twenty-third day of March, 1883, said John C. Johnson sold and conveyed all the said lands to one Charles E. Beach by deed of grant, bargain, and sale, duly signed and acknowledged by said Johnson, which deed was recorded during the year 1883 in the county recorder's office of said county of Humboldt. That thereafter, and on the twenty-sixth day of March, 1883, the said Charles E. Beach did convey all of said lands by deed of grant to Frank P. Hooper, John A. Hooper, and

Josiah Bell, as cotenants, which deed was duly signed and acknowledged by said Beach, and was recorded on the thirtieth day of April, 1883, in liber 8 of Deeds, at page 456, in said county recorder's office.

That thereafter, and on the twenty-seventh day of July, 1883, said Frank P. Hooper, John A. Hooper, and Josiah Bell did convey all of said lands heretofore described to this plaintiff, the California Redwood Company, by deed of grant, duly signed and acknowledged by them, the said grantors, dated July 27, 1883, and recorded August 2, 1883, in liber 9 of Deeds at page 402, in said county recorder's office. That thereafter, and on the seventh day of June, 1889, the commissioner of the general land office did make and enter an order purporting and assuming to cancel said entry of said land by Johnson, and declaring said entry to be null and void, upon the pretended ground that said entry by Johnson had been procured to be made by said Charles E. Beach, and for the benefit of said Beach, and not of said Johnson. That said order was so made and entered by the commissioner of the general land office without any previous notice to your orator, and without any trial or hearing, and without any legal or competent evidence. That at the time of its said purchase of said lands your orator was, and now is, entirely without any knowledge or notice that said entry by Johnson had been procured to be made by said Beach, or had been made for the benefit of said Beach, or of any person other than the said Johnson. That at the time of your orator's said purchase said entry by John C. Johnson was apparently legal and regular, and accepted by the land office authorities, and your orator, in good faith, believed said entry to be entirely valid, regular, and honest and believed that all

of the statements contained in said application by Johnson were true; and therefore, relying upon said belief, and upon the record of said entry and of said subsequent transfers, your orator did, in the usual course of business and in good faith, purchase said lands from said Hoopers and Bell, and did pay to them the full value of said lands in exchange for their said deed to it.

That said entry by Johnson has never been waived, canceled, or relinquished to the United States in any manner by your orator, or by any of its predecessors in interest, and that said order of the commissioner of the general land office, purporting to cancel said entry, was without jurisdiction, and was and is void.

That notwithstanding the said entry and payment by Johnson, William Mahan did thereafter, on or about the eleventh day of September, 1889, apply for and enter said land above described in said land office at Eureka, in the form prescribed by said act of Congress of June 3, 1878; and thereafter, and on the tenth day of March, 1891, a patent for said land, in the name of the United States, signed by the president and countersigned by the recorder of the general land office was issued to said William Mahan from the general land office at Washington. That said Mahan, at the time of his said application for said land, and at all times, had full knowledge and notice of said entry and payment therefor by Johnson, and of your orator's rights and claims thereunder, and that such pretended cancellation of said Johnson's entry was ineffectual and void.

That this action is brought to establish and declare your orator's rights arising under and by virtue of said act of Congress of June 3, 1878, and that the value of said land exceeds the sum of two thousand dollars. That your orator can have no adequate relief at law.

Wherefore, your orator prays that this honorable Court, by its decree, shall adjudge and declare that said defendant holds the title to the said lands as its trustee for the benefit of your orator, and that defendant convey said land to it in fulfillment of said trust, and that defendant, his heirs and assigns, and all persons claiming or to claim under him or them, be forever barred and enjoined from claiming any right, title, or interest in said lands adverse to your orator, and for such other relief as may be meet and equitable.

And your orator will ever pray, etc., etc.

May it please your Honors to grant unto your orator a writ of subpoena of the United States of America, directed to the said William Mahan, commanding him on a day certain to appear and answer unto this bill of complaint (but not under oath, an answer under oath being hereby expressly waived), and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

PAGE, EELLS & WHEELER,
Solicitors for Complainant.

(a) California Redwood Co. v. Mahan, 80 Fed. Rep. 1004; Rev. Stats. U. S., secs. 2207-2489; Desty's Fed. Proc., sec. 84.

No. 529.

Complaint (Public Lands). (a)

[Title of Court and Cause.]

The plaintiff, Northern Pacific Railroad Company, a corporation duly organized and existing under and by virtue of an act of Congress of the United States

of America, approved July 2, 1864, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the Northern Route," complains of the defendant James DeLacy, a citizen and resident of the State of Washington, and for cause of complaint says:

I.

That the plaintiff is the owner of and entitled to immediate possession of the following described lands, to-wit: The southwest quarter of the northeast quarter, the southeast quarter of the northwest quarter and the east half of the southwest quarter of section twenty-one, township twenty north, range three east of Willamette meridian, in Pierce County, State of Washington, which said lands are of great value, to wit, of the value of twenty thousand dollars and more.

II.

And the plaintiff says that the defendant, without the permission of plaintiff and without any color of title thereto, has unlawfully and wrongfully entered upon said above-described lands and now unlawfully and wrongfully withholds possession of said lands from the plaintiff to the great damage of plaintiff.

Wherefore plaintiff demands judgment for the possession of said above-described lands and for ———— dollars damages for the withholding of the same from plaintiff, together with its costs and disbursements herein.

ASHTON & CHAPMAN,
Attorneys for Plaintiff.

F. M. DUDLEY,
Of Counsel.

(a) Northern Pac. R. Co. v. De Lacy, 66 Fed. Rep. 450; 44 U. S. App. 257; see notes to Form No. 493.

No. 530.

Answer. (a)

[Title of Court and Cause.]

Now comes the defendant, James DeLacy, and files this his answer to the complaint of the plaintiff herein, and charges and avers:

First.

Defendant admits the corporate capacity of the plaintiff as stated in said complaint, and that the defendant is a citizen and a resident of the State of Washington, and of Pierce county, said State.

Second.

The defendant denies that the plaintiff is the owner of the land described in the first paragraph of said complaint, and denies that the plaintiff is entitled to the possession of said land, or any part thereof, and defendant admits that said premises are of the value of twenty thousand ($20,000.00) dollars, and more, to wit: the sum of one hundred thousand ($100,000.00) dollars.

Third.

Defendant admits that he is in possession of the land described in said first paragraph of plaintiff's complaint; that he went into possession of the same in April, 1886, without permission of plaintiff, and denies that he is in possession of said premises without color of title thereto, and denies that he is unlawfully or wrongfully upon said premises, and denies that the defendant now unlawfully and wrongfully withholds possession of said land from the plaintiff, to the damage of said plaintiff or otherwise.

Fourth.

Defendant denies that plaintiff is entitled to judgment for the possession of the aforesaid lands or for damages in the sum of ——— dollars.

The defendant for further answer to the complaint of plaintiff herein, and for his affirmative defense herein, charges and avers:

I.

That on April 9, 1869, one John Flett, a citizen of the United States, over the age of 21 years, and in all respects a qualified pre-emptor under the laws of Congress, having made settlement as required by law, filed his pre-emption Declaratory Statement, No. 1227, for the east half of the southwest quarter, the southeast quarter of the northwest quarter, and the southwest quarter of the northeast quarter of section No. twenty-one (21), township No. twenty (20), north of range No. three (3), east of the Willamette meridian, according to the government survey, alleging settlement on said land as of April 7, 1869.

That on said date, to wit, April 7, 1869, said land was unoffered government land, situated in Pierce county, Territory of Washington, and in the district of public lands subject to sale and entry at the United States local land office at Olympia, Washington Territory.

That said declaratory filing was legally and properly made, the fees required by law paid, and register's receipt and certificate of such entry then and there issued to said John Flett, dated April 9, 1869, and said pre-emption entry was by the proper officers at said local land office allowed, entered upon the records, and plats of the local land office at Olympia, W. T., duly reported to the general land office of the United States, at Washington, D. C., and en-

tered upon the books and plats of said general land office, to all of which said books, records, and plats defendant makes reference as a part of this, his affirmative defense herein.

II.

That under the aforesaid declaratory statement, No. 1227, the said John Flett occupied and improved said land and cultivated the same until the year 1871; that said John Flett attempted to make his final proof under his aforesaid filing, and was refused by the local land office at Olympia, W. T., for the alleged reason that said land was within the grant of July 2, 1864, to the Northern Pacific Railroad Company.

III.

That subsequently, to wit, on and prior to April 9, 1886, James DeLacy, this defendant, being over the age of twenty-one years and having filed his declaration of intention to become a citizen of the United States, and being in all respects a qualified pre-emptor, and having made previous settlement on said land, did, on said day, go to said local land office at Olympia, Washington Territory, aforesaid, the same being the proper land office where the land district in which said land aforesaid was situated, and said James DeLacy being then and there legally entitled to make homestead entry of said land under the laws of the United States, offered to make homestead filing on said land as unoccupied public land, subject to pre-emption and homestead entry, and tendered his written statement in form as required by law, the same being duly sworn to, together with all proper and legal fees of said land office for such complete filing and entry, to the register and receiver

of said local land office, and demanded of them to make his homestead filing upon the land aforesaid, all of which was refused by said local land office, and was so refused by the register and receiver of said office for the alleged reason that said lands were within the scope of the grant from Congress to the Northern Pacific Railroad Company, of date July 2, 1864, and the said James DeLacy, this defendant, appealed from such order of refusal to the commissioner of the general land office of Washington, D. C., all of which facts appear of record in the office of the commissioner of the general land office at Washington, D. C., to which reference is hereby made.

IV.

That said John Flett, never having made final proof under said December Statement, No. 1227, and never having resided upon or improved said lands since 1871, forfeited all his rights to make such final proof as required by law, and said pre-emption filing remained upon the records, books, and plats of the general land office of the United States from said April 9, 1869, pending contests in the local and general land office of the United States until December 23, 1891, when the same was for the first and only time, canceled in fact and of record, all of which appears in the records of the general land office at Washington, D. C., and to which records reference is here made.

V.

That the plaintiff herein claims to own said lands by virtue of an act of Congress of the United States, granting lands to the Northern Pacific Railroad Company to aid in building a line of railroad from Duluth, in Minnesota, to the Puget Sound, in Washing-

ton Territory, by the northern route, approved March 2, 1864, and makes no other claim to said lands.

VI.

That the map of general route of the main line of said railroad company was filed July 30, 1870, and an order of withdrawal issued by the land department of the United States, as provided in said grant, on August 13, 1870, at which time the pre-emption filing of said John Flett—D. S., No. 1227, aforesaid —was a valid pre-emption filing upon said lands as hereinbefore described, as shown by the records, books, and plats of the general land office of the United States, to which books, records and plats reference is here made, and said pre-emption filing aforesaid was then a legal, valid, uncanceled pre-emption claim to said lands, and defendant avers such filing and claim excepted said lands from the operation of said grant.

VII.

That the line of definite location of said main line of plaintiff's railroad was filed as provided by said act on July 30, 1870, and that the lands aforesaid were embraced within the limits of the order of withdrawal of August 13, 1870, and within the limits of definite location of route of July 30, 1870, of the main line of said railroad, and on said dates the pre-emption filing of said John Flett aforesaid was a legal, valid, existing, and uncanceled pre-emption claim of record in the general land office of the United States, and was never canceled by the land office of the United States until 1891, and reference is made to such record and plats in the general land office aforesaid. And the defendant avers that the

aforesaid uncanceled pre-emption claim excluded said lands aforesaid from the said grant of July 2, 1864.

VIII.

That the lands in controversy in this suit, and heretofore described, was and are within the limits of the grant to plaintiff on main line of plaintiff's railroad, as declared by act of Congress of May 31, 1870, and that said lands have been occupied by this defendant and his family as their only home under their aforesaid homestead claim, that they have resided thereon constantly since their first settlement thereon, April 9, 1886; that defendant has cleared, grubbed, and cultivated a large portion of said lands; that the lands aforesaid are good agricultural lands, and productive for agricultural purposes; that defendant has erected, at great cost and expense, a good dwelling-house and other improvements on said premises, in which defendant and family now reside; that defendant's improvements upon said lands made by him thereon, for the use of himself and family, and the improvements and betterments on said lands, have cost the defendant, and are of the value of, seven thousand ($7,000.00) dollars; that by reason of defendant's occupancy, cultivation, and improvement of said lands, and the growth of the country surrounding the same, said lands have increased in value from about $1,600.00, at the time defendant made his settlement and claimed his homestead right thereon, to about the sum of one hundred thousand ($100,000.00) dollars, the present value thereof.

IX.

That the defendant, on or about the twenty-ninth day of April, 1892, went to the local land office at

Olympia, Washington, he having at that time constantly resided upon said lands, claiming the same under the law as his homestead and his aforesaid offering and demand to make his aforesaid filing thereon, and having improved and cultivated the same for more than five years, as provided by the homestead laws of the United States, and demanded of the register and receiver of said local land office to issue the notice provided by law, fixing the time and place where the defendant should produce his witnesses to make his final proof under his said homestead claim, which was refused by the officers of said local land office, for the alleged reason that said lands were embraced in, and covered by the aforesaid land grant.

X.

Defendant further charges and avers that on or about the thirteenth day of December, 1892, plaintiff procured to be issued to them, under said land grant, a patent, regular in form, dated and signed December 13, 1892, purporting to convey said lands to plaintiff; that said patent was duly recorded January 18, 1893, in the office of the county auditor of Pierce county, Washington, in Record of Deeds, vol. 99, at page 101, and this defendant avers that said patent was illegally and unlawfully issued, for the reason that the lands described therein, the same being the lands in controversy in this suit, was for the reasons hereinbefore pleaded excluded from the grant of July 2, 1864, aforesaid, and said patent void.

XI.

That this defendant is the head of a family, is over the age of twenty-one years, and in 1886 had, and now has, the lawful right to make his homestead entry as

tendered and offered April 9, 1886, under the homestead laws of the United States. That at said times said lands were unoccupied public lands of the United States, subject to homestead entry; that the defendant and his family made settlement upon the land aforesaid on April 9, 1886, and have continued to live thereon continuously from said April 9, 1886, to the present time; that said defendant and his said family went into possession of said lands lawfully and peaceably, and have remained in undisturbed possession thereof until now; and this defendant alleges that he has the legal and the equitable right to the possession of said premises, and the right to make final proof under the homestead law, and procure to himself a patent from the United States to said premises.

The defendant having now fully answered, prays judgment and order of this Court declaring said patent void, and canceling the same, and that plaintiff take nothing by this suit, and that this defendant is lawfully in possession of said premises, with judgment for his costs herein laid out and expended, and for such other and further order and judgment as the defendant may be entitled to herein.

BALLARD & NORRIS,
Attorneys for Plaintiff.

(a) Northern Pac. R. Co. v. De Lacy, 66 Fed. Rep. 450; 44 U. S. App. 257; see notes to Form No. 528.

Section III.

PATENTS.

No. 531.

Bill in Equity for Accounting and Injunction. (a)

[Title of Court and Cause.]

Edwin T. Earl, a citizen of the United States, and of the State of California, complainant, by leave of Court first had and obtained, brings this, his bill of complaint, against the Southern Pacific Company, a corporation, organized and existing under the laws of the State of Kentucky, but doing business and having its principal place of business at the city and county of San Francisco, in the State of California, Robert Graham, John Doe, Richard Roe and Robert Roe, inhabitants of the Northern District of California, respondents, and thereupon your orator complains and says:

I.

That heretofore, to wit, on December 22, A. D. 1890, he was the original and first inventor of a certain new and useful invention, entitled "Ventilator and Combined Ventilator and Refrigerator Cars," a more particular description of which will be found in the letters patent hereinafter referred to, and to which special reference is hereby made.

II.

That the same was a new and useful invention not known or used by others in this country, not patented, not described in any particular publication in this or any foreign country before the invention thereof by your orator, and at the time of his application for a patent therefor, as hereinafter alleged,

the same had not been in public use nor on sale in the United States more than two years, nor had the same been abandoned.

III.

That thereafter, to wit, on December 22, A. D. 1890, your orator duly and regularly filed in the patent office of the United States an application praying for the issuance to him of letters patent of the United States for said invention, and after proceedings duly and regularly had and taken in the said matter, to wit, on December 22, A. D. 1890, letters patent of the United States bearing date on that day and numbered 465,615, were granted, issued and delivered to your orator, whereby there was granted to him, his heirs and assigns for the full term of seventeen years from said last-named day, the sole and exclusive right and liberty to make, use and vend the said invention throughout the United States of America and the territories thereof. Said letters patent were issued in due form of law under the seal of the patent office of the United States, signed by the secretary of the interior and countersigned by the commissioner of patents of the United States, and prior to the issuance thereof all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions.

IV.

And your orator further shows unto your Honors that the said letters patent were inoperative and invalid by reason of a defective and insufficient specification, and that said error and defect arose through inadvertence, accident and mistake and without any fraudulent or deceptive intention on the part of your orator; that within a reasonable time after the dis-

covery of said error and defect, to wit, on January 17, A. D. 1893, your orator duly surrendered the said letters patent to the commissioner of patents of the United States and filed an application in the patent office of the United States praying that the said letters patent might be reissued for the purpose of curing and remedying said error and mistake. That such proceedings were duly and regularly had and taken in the matter of said application for said reissue, that thereafter, to wit, on April 18, A. D. 1893, the said commissioner of patents of the United States did cause a new patent for the same invention, and in accordance with the corrected specification to be issued and delivered to your orator herein for the unexpired part of the term of the said original patent.

V.

That the said new patent was issued in due form of law under the seal of the patent office of the United States, signed by the secretary of the interior and countersigned by the commissioner of patents of the United States, numbered 11,324 of reissued patents, and bears date April 18, A. D. 1893, on which said day the same was delivered to your orator, whereby there was granted and secured to him, his heirs and assigns for the residue then unexpired of the said term of seventeen years from December 22, A. D. 1891, the sole and exclusive right, liberty and privilege to make, use, and vend the said invention throughout United States of America and the territories thereof.

VI.

That said reissued letters patent were and are for the same invention as that for which the original letters patent were granted, and prior to the issuance

of said reissued letters patent all proceedings were had and taken which were required by law to be had and taken prior to the issuance of letters patent for new and useful inventions, which said reissued letters patent are hereby specially referred to for further and fuller description of the invention therein patented, and are ready in court to be produced by your orator or a duly authenticated copy thereof. (b)

VII.

And your orator further shows unto your Honors that through inadvertence, accident and mistake, and without any fraudulent or deceptive intention, the specification and the first two claims of said reissued letters patent were made too broad and included more than that of which your orator was the original and first inventor and discoverer, in this, towit: The language of the said two claims was and is broad enough to include a ventilator device for refrigerator cars in which a hinged ice-hole door is held open at an angle by any and all means and mechanisms adapted to so hold the same open, and therefore included a device in which the said door is held open by a hook or block of wood, or other prop without any side wings or front screen.

VIII.

That after your orator discovered such facts, and within a reasonable time, to wit, on March 5, A. D. 1894, being then the sole owner and holder of said reissued letters patent, he did make and file in the patent office of the United States a disclaimer in writing attested by two witnesses, and did cause the same to be recorded in the said patent office on said March 5, A. D. 1894, and the same was attached to and made a part of the said reissued letters patent.

That in and by said disclaimer the paragraph comprising lines 82 to 90, inclusive, on page 1 of the specifications of said reissued letters patent was amended to read as follows: (States the amendment.)

Also lines 14 to 17, inclusive, and the last three words of line 13, page 3, of the specification were canceled, to wit, the words, etc.

Also claim 1 was amended so as to read as follows: (Amendment stated.)

Also claim 2 was disclaimed in so far as it was not wholly covered by said claim 1 as amended by said disclaimer, and was therefore canceled for lack of patentable novelty over said claim.

IX.

And your orator further shows unto your Honors that thereafter, to wit, on May ——, A. D. 1895, having discovered through the advice of counsel that said claim 1 as amended was still too broad and included more than that of which he was the original and first inventor and discoverer, in that the same might be construed to cover a ventilator device for refrigerator cars in which a hinged ice-hole door was held open at an angle by any and all means and mechanisms capable of holding the same open, your orator did file and cause to be recorded in the patent office of the United States a further disclaimer, wherein and whereby he disclaimed the said claims 1 and 2 of said reissued letters patent in full, and said last-named disclaimer became a part of the said reissued patent and was attached to the same as a part thereof.

X.

And your orator further shows unto your Honors that ever since the issuance of said reissued letters

patent he has been and is now the sole owner and holder thereof, and has practiced the invention described therein, and has used large numbers of cars containing and embodying the said invention, and upon the said cars was marked the word "patented," together with the date and number of the patent, thereby giving notice to the public at large that the device was covered by the said reissued letters patent.

XI.

And your orator further shows to your Honors that heretofore, to wit, on March 12, A. D. 1896, there was pending in this Honorable Court an action at law, wherein your orator was the plaintiff, and Robert Graham, one of the defendants herein, was the defendant. (c)

That the said action was based upon the said reissued letters patent hereinabove referred to, and was brought to recover damages for the infringement thereof by the said Robert Graham; that in said action at law the said Robert Graham appeared and made defense by counsel learned in the law, and denied the validity of the said letters patent as well as the infringement thereof, and thereby the validity of said letters patent, as well as the infringement thereof, was put in issue by the pleadings;

That said action at law was duly brought on for trial on March 8, A. D. 1896, and thereupon a jury of twelve men was impaneled and sworn to try the case and the said case was on trial from day to day until March 12, A. D. 1896, during which time voluminous proofs were made by the respective parties in order to maintain their respective contentions, and the said case having been fully tried upon the issues so framed as aforesaid, was, on March 12, A. D.

1896, duly and regularly submitted after lengthy argument by respective counsel to the said jury for its consideration and decision, and the said jury having duly considered the same, did on said March 12, A. D. 1896, duly and regularly render and file with the clerk of said Court a verdict in said action at law in favor of the plaintiff therein and against the defendants therein for the sum of one dollar as damages, and thereafter a judgment was entered and duly made and given upon said verdict whereby it was adjudged that the said reissued letters patent were good and valid, and that the said defendant, Robert Graham, had infringed upon the same. That the said judgment has never since been altered or modified and is still in full force and effect.

XII.

And your orator further shows unto your Honors that the names of the defendants herein designated as John Doe, Richard Roe and Robert Roe are unknown to your orator, and the names John Doe, Richard Roe and Robert Roe are fictitious, but are jointly connected and associated with the other defendants in operating and embracing the invention patented in and by said letters patent, and the defendant, the Southern Pacific Company, is a railway corporation engaged in transporting and hauling for the other defendants for hire the said cars containing the said patented invention and in operating and manipulating the ventilators while hauling said cars; and the ventilators on said cars are the same identical ventilators which were adjudged in and by the judgment in the said action at law to be an infringement of the said letters patent.

XIII.

Your orator further shows unto your Honors that notwithstanding the premises, but well knowing the same, and without the license or consent of your orator, within one year last past, and in the Northern District of California, the defendants herein have jointly used large numbers of cars containing and embracing the invention described and patented in and by the said reissued letters patent and the claims thereof, which are numbered 3, 4, 5, 7, 8, and have infringed upon the exclusive rights secured to your orator by the said claims. That your orator has requested the defendants to cease and desist from infringing upon said letters patent and had hoped that the said defendants would have complied with such reasonable request, but the fact is, nevertheless, that the said defendants have failed, refused and neglected to comply with such request and are now still using said cars containing said patented invention and threaten to continue to so use them, and unless restrained by this Court will continue to so use the same.

XIV.

That by reason of the premises your orator has suffered great and irreparable injury and damage, and he avers upon his information and belief that the defendants have realized large profits and gains.

That for the wrongs and injuries herein complained of your orator has no plain, speedy or adequate remedy at law, and forasmuch as he is without any remedy in the premises save in a court of equity where matters of this kind are properly cognizable and relievable.

To the end, therefore, that the said defendants may, if they can, show cause why your orator should not

have the relief herein prayed, and may, but not upon oath, an oath to the defendants' answer being hereby waived, according to the best and utmost of their knowledge, recollection, information and belief, full, true, direct and perfect answer to make to all and singular the matters and things hereinabove charged, and that said defendants may be decreed to account for and pay over to your orator the gains and profits realized by the said defendants from their unlawful use and practice of the invention patented in and by said reissued letters patent, and in addition to the profits to be accounted for, as aforesaid, the damages sustained by your orator, together with the costs of suit.

May it please your Honors to grant unto your orator a writ of injunction (d) issued out of and under the seal of this Court, provisionally, and until the final hearing, enjoining and restraining the said defendants their clerks, employees, agents and attorneys from making, using and selling any cars or ventilators, or devices containing and embodying the invention patented in and by said claims 3, 4, 5, 7 and 8, or either or any of them, and that upon the final hearing of the case said provisional injunction to be made perpetual, and that your orator may have such other and further relief as the nature of the case may require and to your Honors may seem meet and proper and in accordance with equity and good conscience.

May it please your Honors to grant unto your orator a writ of subpoena directed to the said defendants, the Southern Pacific Company, and Robert Graham, commanding them at a certain time and under a certain penalty therein to be limited, personally to be and appear before this honorable Court, then and there to answer to this bill of complaint, and to stand to, perform and abide by such further orders,

directions and decrees as to your Honors shall seem meet in the premises.

And your orator will ever pray.

JOHN H. MILLER,
JOHN L. BOONE,
Solicitors for Complainant.

JOHN H. MILLER,
JOHN L. BOONE,
BISHOP & WHEELER,
Of Counsel for Complainant.

United States of America,
Northern District of California, } ss.
City and County of San Francisco.

E. T. Earl, being duly sworn, deposes and says that he is the complainant in the within-entitled action; that he has read the above and foregoing amended bill of complaint and knows the contents thereof: that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

E. T. EARL.

(a) 48 U. S. App. 691, 716; Desty's Fed. Proc., sec. 84.

(b) Desty's Fed. Proc., sec. 412.

(c) See ante, Form No. 1.

(d) Eq. R. 55.

No. 532.

Affidavit to Support Application for Injunction. (a)

[Title of Court and Cause.]

State of California,
City and County of San Francisco. } ss.

Edwin T. Earl, being first duly sworn, deposes and says as follows:

That he is the complainant in a suit entitled as above, and about to be commenced in the above-entitled court, and is the same Edwin T. Earl mentioned in the bill of complaint in said suit, and the patentee named in the reissued letters patent sued on herein.

That the defendant, Robert Graham, is the general manager, in the State of California, for a line of refrigerator cars, comprising about 90 cars in number, said to be owned by Armour & Co., of Chicago, Illinois, and being operated under the name of the Fruit Growers' Express.

That the other defendants, save and except the Southern Pacific Company, and Southern California Railway Company, are agents, servants and employees of the said Armour & Company, in the State of California, and are jointly associated and connected with the said Graham in the business of operating said line of cars in the State of California; that the said Armour & Company reside outside of the State of California, to wit, at the city of Chicago, in the State of Illinois, under the management of the said Robert Graham and with the assistance and help of the other defendants.

That the Southern Pacific Company and Southern California Railway Company, defendants, are railroad corporations engaged in operating railways in

the State of California as common carriers of freight and passengers; that in operating said railways they have been and are now jointly engaged in hauling over their lines the said cars hereinabove referred to as belonging to Armour & Company, and charging for such hauling a regular toll or tariff; that the method of operating said cars is as follows:

The said Robert Graham, as manager for Armour & Company in the State of California, makes agreements with the growers and shippers of fruits and vegetables in the State of California, whereby he undertakes to have and cause the said fruits and vegetables to be transported in the said cars of Armour & Company, from points within to points outside of the State of California; that the said Graham further agrees with such growers and shippers to properly refrigerate said cars, by supplying them with the requisite quantity of ice whenever it is necessary to so refrigerate them, and to properly ventilate them whenever it is necessary, for the purpose of preserving their contents, and thereupon the said Robert Graham instructs and directs the Southern Pacific Company, and the Southern California Railway Company, upon whose tracks the said cars are at the time, to place at the disposal of such growers and shippers the necessary number of said cars, and thereupon the said railroad companies so do, and the said growers and shippers thereupon load the said cars with their fruits and vegetables, and the said Robert Graham and his attendants properly refrigerate the said cars by placing therein the requisite quantity of ice, when refrigeration is necessary, and the said railway companies then haul said cars, with their contents to their point of destination outside of the State of California. That the said growers and shippers pay the actual freight on said cars to the said

railway companies or their agents, and also pay to Armour & Co., either directly or indirectly, compensation for the use of said cars, according to a certain established tariff. That the defendants, John A. Gill, A. W. Logan, J. W. McClymonds, John Doe, Richard Roe and Robert Roe, are employees of Armour & Company in the State of California under the defendant Graham, as manager for Armour & Company, acting as cashiers, clerks and assistants to said Graham.

That the said Graham and the other defendants, save and except the railway companies, are employed by the said Armour & Company at stipulated salaries, but they have actual control and management of the said cars in the State of California to the extent above indicated, and no one in California can use said cars without their consent, or that of some of them.

That the said cars have attached to them and connected therewith ventilators constructed according to letters patent of the United States No. 537,293, granted to T. B. Kirby on April 9th, A. D. 1895. That one of said Kirby ventilators is placed at each of the four corners of the cars on the roof thereof, and are in oppositely inclined positions when in use; that the said cars and ventilators are the identical cars and ventilators which were involved in the action at law referred to in the bill of complaint as being used by the therein named defendant, Robert Graham, and which were found by the jury to be an infringement upon the reissued letters patent of affiant sued on in that action.

That since the verdict of the jury in said action at law the defendant Graham and his co-defendants have continued to use said cars with said ventilators thereon in the same manner in which they were using the same prior to the said verdict, and intend to

continue, and will so continue as affiant is informed and believes, unless restrained by this Court.

Affiant further avers that the use of said Kirby ventilator device, as aforesaid by the defendants, has caused and is now causing very great injury and damage to affiant by depriving him of business which he otherwise would receive and enjoy, and from which he would derive large gains and profits; that the said Kirby ventilator has been placed upon a large number of cars, to wit, about 900, which are engaged in carrying fruits and vegetables from points in California to points outside of California. That the result of the use of the said Kirby device upon said cars by the defendants has been to take away a portion of the business in which affiant is engaged, to wit: the carrying of fruit and vegetables to the eastern market, and if the use of said Kirby ventilator device is continued as heretofore, affiant will be further greatly damaged and injured, and will be deprived of further business which he otherwise would enjoy.

That it is impossible to calculate the damage which affiant will suffer and has been suffering from the use of said Kirby device by the defendants, or to measure the same with sufficient definiteness to form the basis of a judgment, and the only beneficial remedy which affiant can have or which will protect him is an injunction to restrain the further use of said Kirby device.

That the manner which affiant has selected in which to use his patented invention and derive profits therefrom is as follows; that is to say, he has caused to be organized a corporation called the California Fruit Express Company, and has given to said corporation a license to use the invention on one thousand cars; and has also caused to be organized an-

other corporation called the Continental Fruit Express, of which affiant is the principal stockholder, and has given to said last-named corporation a verbal license to use the patented invention on cars.

That the said two corporations have used the said invention under said licenses, and thereby affiant has derived large profit and revenue; that affiant has never given any license to any other person or corporation; that for such reason he has never established a license fee for the use of his invention by others, and does not intend to do so, as he desires to prevent all other persons from using his inventions, save and except to said corporations; that all other rights under said patent, and the full and complete title thereto, have been reserved to and are owned by affiant.

That the profits derived from the transportation of fruits and vegetables to the eastern market are dependent on numerous and various conditions of circumstances, and numerous and various elements enter into the same.

That one of the said elements consists in a suitable and proper ventilator to be used upon the cars transporting the fruits and vegetables aforesaid and the value of affiant's ventilator device consists in its increased efficiency and benefit over and above any other ventilator device used for a similar purpose.

That said increased value is very difficult of measurement and almost impossible to be determined in dollars and cents, for the reason that the various conditions and circumstances which enter into the transportation of fruits and vegetables, and the use of the ventilator device in connection therewith, are very numerous, and change and vary from time to time, and are dependent on the state of the weather, changes of temperature and climate, varying sea-

sons, and different routes over which the cars may pass, and while he can testify and does testify that his ventilator device is a most efficient one, and far superior to any and all other ventilator devices used or that can be used for similar purposes, it is utterly impossible for him or any other person to specify that value in dollars and cents, or to say how much more valuable in dollars and cents it is over other ventilator devices.

Affiant further says that the use of the Kirby ventilator device has had the effect of depriving him of business which he otherwise would have done, and has thereby caused him to lose the profits which he would have derived from such business, and the use of the Kirby device in the future will continue to have such effect, and thereby affiant will suffer very great loss and damage in his general business of transporting fruits and vegetables, which cannot be measured with accuracy or precision, and it was on that account that in the action at law hereinabove referred to, in which a verdict was rendered against said Robert Graham, affiant waived all damages save and except a nominal amount, and requested that such damages be assessed at the sum of one dollar, it being impossible for him to properly fix any definite measure of damages.

That on account of the reasons aforesaid, the only adequate and complete remedy which affiant can have is a writ of injunction issued out of this court to restrain the defendants from further infringing upon his said reissued letters patent.

That affiant is still the owner and holder of the said reissued letters patent.

EDWIN T. EARL.

Subscribed and sworn to, etc.

(a) Daniell's Ch. Pr., 5th Am. Ed., 1668, 1669; Foster's Fed. Pr., sec. 232; Desty's Fed. Proc., sec. 84; Youngblood v. Schamp, 15 N. J. Eq. 42.

No. 533.

Supplemental Bill where the Patent has been Extended since the Filing of the Original Bill. (a)

[Title of Court and Cause.]

AB, of ————, in the State of ————, brings this, his supplemental bill, against XY of ————.

And thereupon your orator complains and says:

That he filed his original bill against the defendant in this Court on the —— day of ———, 18—, wherein he prayed for a discovery, account, payment of profits and an injunction to restrain the said defendant from infringing on your orator's patent, granted to him by the United States of America, for improvement in ————, dated the —— day of ———, 18—, and for other relief as stated in his said original bill.

And your orator further shows that since the filing of his said original bill, namely, on the —— day of ———, 18—, upon the application of your orator and after due proceedings had in all respects as required by law, the commissioner of patents granted the extension of said patent for the term of seven years from and after the expiration of the first term thereof, viz., the —— day of ———, 18—, and made a certificate of such extension thereon and entered the same on record in the patent office of the United States in due form of law; and thereupon the said patent was renewed and extended, and now has the same effect in law as though it had been originally granted, for the term of twenty-four years as in and

by said certificate, or a certified copy thereof, here in court to be produced, will more fully appear. Yet the said defendant, well knowing the premises, but contriving how to injure your orator and without his consent or allowance, and without right and in violation of said letters patent and your orator's exclusive rights, secured to him as aforesaid from ———, 18—, has made, used or vended, and still does make, use or vend, to others, to be used in said district and in other parts of the United States, a large number of (describe the articles), but how many your orator cannot state, but prays that the defendant may discover and set forth each, embracing substantially the improvement in ———, or a material part thereof, patented by your orator as aforesaid; and thereby the said defendant has infringed and still does infringe and cause your orator to fear that in future he will infringe upon the exclusive rights and privileges intended to be secured to your orator in and by his said letters patent.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief herein and in his said original bill prayed, and may under oath and according to his best and utmost knowledge, remembrance, information or belief, full, true, direct and perfect answer make to all and singular the premises, and, more especially, may answer, discover and set forth whether during any and what period of time since ———, 18—, and where he has made, used or vended to others to be used, for any and what consideration, any and how many (articles), and whether or not the same embraced the said improvement in ————, or any substantial part thereof, patented to your orator as aforesaid, or how the same differed from your orator's said patent, if at all.

And that said defendant may answer the premises and may be decreed to account for and pay over to your orator all gains and profits realized from his unlawful making, using or vending of ————, embracing said improvement, patented to and vested in your orator as aforesaid, and may be restrained by an injunction to be issued out of this honorable Court, according to law, from making, using or vending any ————, embracing said improvements or any substantial part thereof, patented to your orator as aforesaid; and that the infringing (machines) now in the possession or under the control of the defendant may be delivered up to your orators to be destroyed, and for such further and other relief in the premises as the nature of the case may require and to your Honors shall and may seem meet.

May it please your Honor, etc.

(a) Eq. R. 57; and see notes to Form No. 531.

No. 534.

Allegations in Bills in Equity.

Patent Assigned Before Suit Brought.

And your orator further shows that, on or about the —— day of ———, the said ————, by an assignment in writing, sold, assigned and transferred unto the said AB the entire right, title and interest in and to said letters patent and invention, together with all rights of recovery for past infringements arising under said letters patent, which said assignment was duly recorded in the patent office of the United States.

Note.—If more than one assignment, make a separate allegation as to each.

No. 535.

Reissue of Patent.

And your orator further shows that the said (patentee) has for good and lawful cause surrendered said letters patent to the commissioner of patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, they were canceled, and new letters patent, which were marked Reissue No. ———, were, on the —— day of ———, 18—, in due form of law, issued to said (patentee), which said reissued letters patent are of record in the patent office of the United States and a certified copy (a) thereof is here ready in Court to be produced.

(a) Desty's Fed. Proc. sec. 412.

No. 536.

Suit by Administrator of Patentee.

And your author further shows that the said (patentee) died intestate on or about the —— day of ———, 18—, and that on or about the —— day of ———, 18—, the said ———— was duly appointed and qualified as administrator of the estate of the said ————, deceased, and thus became, as such administrator, possessed of the rights granted to the said ———— under and by virtue of said letters patent.

No. 537.

Prior Adjudication.

And your orator further shows that in the month of ————, 18——, W. of the city of ————,

state of ———, was manufacturing and selling (describe the articles), embodying the invention set forth in ————, and in infringement and violation of the rights of your orator under the said letters patent No.——; that on the —— day of ——, 18—, the said (patentee) brought his bill in equity in the Circuit Court of the United States for the ——— district of ———— against the said VW, and in said suit complained that the defendant had infringed and threatened the further infringement of the said letters patent. (If a preliminary injunction has been granted add:) [And that he thereupon moved the Court for a preliminary injunction therein, that the said motion came up to be heard in said Court before the Hon. ————, Judge of said Circuit Court, on the —— day of ————, 18 ——, on affidavits and proofs filed by the respective parties, and was argued by counsel; and that upon consideration of said proofs and arguments the court on the ——— day of ————, 18—, ordered an injunction as prayed for restraining the defendant from infringing the said letters patent No. ——, and the said injunction was accordingly granted and issued]; that the said defendant filed his answer to the said bill of complaint and the said cause came on to be heard on the pleadings and proofs and was argued on the —— day of ——, 18—, before the Hon. ————, Judge of said Circuit Court, by counsel for the respective parties; and on the —— day of ——— 18—, the court ordered a decree for the plaintiff affirming the validity of said letters patent No ———, and a perpetual injunction as prayed for restraining said defendant from infringing said letters patent; and said perpetual injunction was accordingly granted and issued.

No. 538.

Restraining Order and Order to Show Cause. (a)

[Title of Court and Cause.]

On reading and filing the verified complaint in the above entitled suit and the affidavit of Edwin T. Earl, complainant therein, and upon a consideration of the judgment-roll, records and testimony, and other evidence taken in the action at law in this court, entitled Edwin T. Earl vs. Robert Graham, No. 12,114, and on other good cause shown, it is ordered that the defendants in this case, and each of them, be and appear in this court, at the courtroom thereof in the city and county of San Francisco, State of California, on the 13th day of April, A. D. 1896, at the hour of eleven o'clock, A. M., then and there to show cause, if any they can, why a writ of injunction should not issue in this case enjoining and restraining said defendants and each of them, until the further order of the court, from infringing upon claims 3 and 4 of reissued letters patent sued on in this case No. 11,324, granted to Edwin T. Earl, on April 18, A. D. 1893, which said claims read as follows:

"3. In combination with a car having separate and independent openings, a lid or cover for each opening adapted to close the latter, and foldable devices substantially as shown and described, for holding the lids open in oppositely inclined directions.

"4. In combination with a car having separate and independent openings, movable covers or lids adapted to close such openings, and side wings hinged to such lids or covers, and adapted to sustain them in oppositely inclined positions, and to form in connection with the lids, a funnel."

And in the meanwhile, and until the hearing of such order to show cause and the decision thereon,

we do strictly enjoin and prohibit you, the said Southern Pacific Company, Southern California Railway Company, Robert Graham, John A. Gill, A. W. Logan, and J. W. McClymonds and each of you, your agents, servants, attorneys, workmen, and employees, and each of them, from hauling and transporting, or moving from place to place, or from leasing or from hiring out to others, or from using either directly or indirectly, in any manner whatever, in combination with a car having separate and independent openings, a lid or cover for each opening adapted to close the latter, and foldable devices such as are shown and described in the said Earl patent for holding the lids open in oppositely inclined directions, and also in combination with a car having separate and independent openings, movable covers or lids adapted to close such openings, and sidewings hinged to such lids or covers and adapted to sustain them in oppositely inclined positions and to form in connection with the lids a funnel, or any colorable imitation thereof, and also from using certain ventilator devices known as the Kirby Ventilator, and described in letters patent of United States No. 537,293, granted to Thomas B. Kirby on the 9th day of April, 1895, and being the same ventilator shown in the said action at law of Edwin T. Earl against Robert Graham, No. 12,114, to have been used by the said Graham as the general manager of the business of Armour & Company in the State of California, and also from infringing upon claims 3 and 4, or either of them, of said reissued letters patent No. 11,324, granted to Edwin T. Earl on April 18, 1893.

And on the hearing of this order to show cause plaintiff may use, read, and refer to the bill of complaint in this case, the affidavit of Edwin T. Earl and the judgment-roll, various proceedings, testimony,

and evidence taken in the said case of Edwin T. Earl vs. Robert Graham, No. 12,114 in this Court.

That a copy of the said bill of complaint and of the said affidavit of Edwin T. Earl be served upon the defendants in this case five days before the return day.

WM. W. MORROW,
Judge.

(a) Eq. R. 55.

No. 539.

Reply to Order to Show Cause. (a)

[Title of Court and Cause.]

The appearance of M. A. Wheaton, Esq., for and on behalf of the Southern Pacific Railroad Company, Southern California Railway Company, Robert Graham and in reply to a rule of said Court in this cause to show cause why a preliminary injunction should not issue, and for no other purpose, it is alleged on behalf of said defendants:

1.

That the said reissued patent declared on in said bill was not made in accordance with law, and is therefore void.

2.

That the disclaimers set forth and alleged in said bill of complaint were not made in accordance with law in that they amended and changed the patent.

3.

That the title of said patent shown by the complainant's affidavit filed with said bill is not in the complaint, it appearing from the affidavit that he has conveyed an exclusive license to said patent.

4.

The novelty and validity of said patent is also denied.

5.

The allegation contained in the bill that the above-named defendants or any of them have infringed said patent is also denied.

6.

The allegation in said bill that there has been a judgment entered at law, which judgment still stands in force and effect and uncontroverted and therefore should be considered necessary as controlling this Court, is also denied.

7.

All charges of combination and confederation set forth in the bill of complaint in this cause between the several defendants is denied; and it is alleged that the defendant railway companies each operates its own roads separately and distinctly and is a common carrier, and therefore is obliged by law to haul the cars tendered it for transportation, and that it has no control over any attachments that may be applied to cars which it does not own but simply transports for others, and that the individual defendants above-named are simply in the employ of other parties having nothing to do with the alleged infringement set forth in said bill.

8.

The allegations of the bill as to infringement (even if the device complained of is an infringement of the patented device) are not sufficient to entitle the complainant to a preliminary injunction in that it is not alleged that the defendants or either of them used the patented device, the allegation being that

they operated cars to which the patented device is attached, there being no allegation that they actually used the patented device.

9.

This Court has no jurisdiction of the defendants not residing in the Northern District of California, who were served out of the Northern District of California.

10.

There is no allegation in the bill that the infringement was committed in the Northern District of California, therefore this Court has no jurisdiction to enjoin the infringement complained of, it not appearing but that the infringement was committed without and beyond the jurisdiction of the Court.

11.

That the complainant has not made out such a case as would justify the Court in granting a preliminary injunction herein.

12.

That such case as the complainant has made out is met by the showing that is made by the defendants herein.

13.

That the Court ought not to grant an injunction that will run against such of the defendants herein as do not reside and have not been found in this Judicial District, and over whom the Court has no jurisdiction.

WHEATON, KALLOCH & KIERCE,
L. L. COBURN, Of Counsel.
Special Solicitors of the Defendants for resisting the application for an injunction.

(a) Eq. R. 55.

No. 540.

Order for Injunction. (a)

[Title of Court and Cause.]

The Court having heretofore made an order in this case requiring the defendants to show cause why a preliminary injunction should not issue in this case out of and under the seal of the Court, enjoining and restraining the defendants until the further order of the Court in the terms hereinafter stated; and the defendants Southern Pacific Company and Robert Graham, having appeared in answer to this said order to show cause, but failing to show any sufficient cause to prevent the issuance of such injunction; and it having been made to appear to the Court that the complainant is entitled to such injunction.

It is therefore ordered that a writ of injunction issue out of and under the seal of this Court in the usual form, enjoining and restraining the defendants, Southern Pacific Company and Robert Graham, and each of them, their agents, attorneys, servants, workmen and employees, until the further order of the Court, from infringing upon claims 3 and 4 of reissued letters patent No. 11,324, granted to Edwin T. Earl on April 18, A. D. 1893, which read as follows:

"Third. In combination with a car having separate and independent openings, a lid or cover for each opening adapted to close the latter, and foldable devices substantially such as shown and described, for holding the lids open in oppositely inclined directions.

"Fourth. In combinations with a car having separate and independent openings, movable covers or lids adapted to close such openings, and side wings hinged to such lids or covers, and adapted to sustain them in oppositely inclined positions, and to form in connection with the lids a funnel."

And it is further ordered that said writ of injunction shall enjoin and restrain the said Southern Pacific Company and Robert Graham, and each of them, their agents, servants, attorneys, workmen, and employees, and each of them, from hauling, transporting, moving from place to place, leasing, or hiring to others, and using, either directly or indirectly, in combination with a car having separate and independent openings, a lid or cover for each opening adapted to close the latter, and foldable devices substantially such as are shown and described in the said Earl patent for holding the lids open in oppositely inclined directions, and also in combination with a car having separate and independent openings, movable covers or lids adapted to close such openings, and side wings hinged to such lids or covers, and adapted to sustain them in oppositely inclined positions and to form in connection with the lids a funnel.

And also from using either directly or indirectly that certain ventilator device known as the Kirby ventilator described in letters patent of the United States, No. 537,293, granted to Thomas B. Kirby on April 9, 1895, and being the ventilator device heretofore used by you, or authorized to be used by you upon the cars of the Fruit Growers' Express.

It is further ordered that this injunction shall not apply to cars already loaded or in process of loading at the date hereof.

Aug. 22, 1896.

WM. W. MORROW,
District Judge.

(a) Eq. R. 56; 48 U. S. App. 716.

Section IV.

TRADEMARK.

No. 541.

Bill of Complaint (Infringement of Trademark). (a)

[Title of Court and Cause.]

To the Honorable, etc.

William J. Benkert, who is a citizen and resident of the State of Pennsylvania, brings this, his bill, against Morris Rosenthal and Samuel Feder, both of whom are citizens of and residents in the State of California.

And thereupon your orator complains and says:

I.

That heretofore, to wit, about twenty-five years ago, Casper Benkert, who was the father of your orator, and your orator were partners and as such were engaged in the business of manufacturing and selling very fine boots and shoes of high grade and excellent quality, and that they carried on said business under the firm name of C. Benkert & Son in the city of Philadelphia in the said State of Pennsylvania.

That the said C. Benkert and your orator continued to carry on said business under said firm name in said city of Philadelphia until the year 1876, when the said Casper Benkert conveyed his entire interest in said business to your orator and retired from the same, and ever since said last-mentioned time your orator has carried on said business in said City of Philadelphia, and has been and still is the sole owner and proprietor thereof.

That ever since said Casper Benkert so conveyed his interest in said business to your orator in the year 1876 your orator has carried on and still con-

tinues to carry on, the said business in the said City of Philadelphia, and has been and still is the sole owner and proprietor thereof.

II.

That during all said time said partnership of C. Benkert & Son and your orator as its successor made it an especial business to manufacture and sell boots and shoes of a high grade and fine quality only, and during all said time they have manufactured immense quantities of such boots and shoes and have sold the same in all the markets throughout the world. That all of said boots and shoes so manufactured by them were of the very best and finest quality and commanded a higher price throughout the markets of the world than any other boots and shoes manufactured and sold in quantities by any person, firm, company or corporation. That each and every one of said boots and shoes so manufactured and sold by the said partnership of C. Benkert & Son and by your orator as its successor had plainly marked upon them the words "C. Benkert & Son." The said name of "C. Benkert & Son" was placed upon said boots and shoes as a trademark and to indicate the ownership and origin thereof, and during all of the twenty-five years last past the said boots and shoes have been known throughout all the markets of the world by the said name "C. Benkert & Son" which was upon them.

Your orator further shows that the said name of C. Benkert & Son has been a trademark upon said boots and shoes and the said partnership of C. Benkert & Son and your orator as its successor in business have been the sole and exclusive owners and proprietors thereof; that during all said time there has been no other firm or partnership or individual

or corporation carrying on the business of manufacturing or seling boots and shoes under the name of C. Benkert & Son, and no other persons except the said partnership of C. Benkert & Son, and your orator as its successor, has had the right, or now has the right, to place said name of C. Benkert & Son or any name in imitation thereof upon either boots or shoes.

III.

That the defendants, Morris Rosenthal and Samuel Feder, are now and for more than five years last past have been partners in trade and as such carrying on the business of importing, manufacturing and dealing in boots and shoes in the city and county of San Francisco, State of California, under the firm name of Rosenthal, Feder & Co.

IV.

Your orator further states and shows unto your Honors that within the past five years and since and while your orator has had the exclusive right to use the said name, C. Benkert & Son, as a trademark, the respondents herein, Morris Rosenthal and Samuel Feder, had manufactured and sold and are now manufacturing and selling large quantities of boots and shoes upon each one of which they have placed and are now placing in plain, conspicuous, printed letters the name "C. F. Benkert & Son" in imitation of the name "C. Benkert & Son" as it has heretofore been used by your orator and the said partnership of C. Benkert & Son as hereinbefore stated.

The said respondents have also stamped in the sole leather upon the bottom of each one of the said boots and shoes in plain, conspicuous letters the name and words "C. F. Benkert & Son, Phil."

V.

That the said respondents have manufactured and sold and still manufacture and sell the said boots and shoes marked with the name, "C. F. Benkert & Son," as aforesaid in the city and county of San Francisco, State of California, and they also have been and still are selling the same in large quantities in the Hawaiian Islands and in other domestic and foreign markets throughout the world.

That the said boots and shoes so manufactured and sold by the respondents and having said name and trademark upon them as aforesaid were and are of a quality very much inferior to the boots and shoes made and sold by your orator as aforesaid, and were manufactured at a much less cost and were sold for much smaller prices.

The said respondents have also within the five years last past had manufactured for them in other places and by parties other than your orator, and which places and parties are unknown to your orator, large quantities of boots and shoes, on each one of which was printed in conspicuous letters the name "C. F. Benkert & Son," and on the bottom of each one of which was stamped in plain letters the names "C. F. Benkert & Son, Phila.," and have sold and still are selling the same in large quantities, with said words printed and stamped thereon, in the said city and county of San Francisco and in other markets of the world to the public generally. That all of said boots and shoes were so marked and sold by the respondents and the parties from whom they purchased the same without the consent and against the will of your orator. That the said respondents have placed and caused to be placed upon the said boots and shoes so sold by them the said words "C. F. Benkert & Son" and "C. F. Benkert & Son, Phila.,"

for the purpose of deceiving the public and purchasers generally and causing them to believe the said boots and shoes were manufactured by your orator. That the public and purchasers generally have been deceived and have believed, on account of said name being upon said boots and shoes as aforesaid, that the same were the genuine boots and shoes manufactured by your orator, and being so deceived the public and purchasers generally have purchased and are now purchasing, and the respondents have sold and are now selling, said boots and shoes as and for the genuine boots and shoes manufactured and sold by your orator.

That by so doing the respondents have thereby unlawfully greatly injured and depreciated the trade of your orator in fine boots and shoes and have also greatly injured and depreciated the good reputation and standing which your orators' said boots and shoes had throughout the markets of the world.

Your orator further shows that, unless restrained by an injunction issued out of this honorable Court, the said respondents will continue to use the said name of "C. F. Benkert & Son" upon boots and shoes sold by them and thereby infringe upon the said name and trademark of your orator as they have already been doing: that in so infringing upon your orators said name and trademark as hereinbefore stated the said respondents have made and received large gains and profits, but how much your orator does not know, neither does your orator know, nor can he ascertain, without the assistance of this honorable Court, how many boots and shoes the respondents have sold with the said mark "C. F. Benkert & Son" printed and stamped upon them.

That by reason of said infringement of your orator's said trademark, your orator has suffered loss and

damage to a very large amount, how much he is at present unable to tell.

To the end, therefore, that your orator may obtain relief in the premises in this honorable Court, where alone adequate relief can be afforded, he prays:

First. That the said Morris Rosenthal and Samuel Feder may be made defendants to this bill and compelled to answer each and every material allegation thereof on oath as fully and to the same extent as if they were directly and particularly interrogated as to each allegation.

Second.—That the said defendants and each of them may be compelled to render a full, true and perfect account of all profits of every description which they have made by the use of the simulated trademark and name "C. F. Benkert & Son," and that they may be adjudged and decreed to pay over all such profits to your orator.

Third.—That the loss and damage which your orator has suffered by the unlawful use of said trademark and name may be also ascertained, and that the respondents may be adjudged and decreed to pay the same to your orator.

Fourth.—May it please your Honors to grant to your orator a writ of injunction restraining and enjoining the said respondents, Morris Rosenthal and Samuel Feder, and each of them, from placing or causing to be placed upon boots or shoes the said name of "C. F. Benkert & Son," or the name "Benkert," in any form or any name in imitation thereof, and from selling or offering for sale any boots or shoes on which the name "C. F. Benkert & Son," or the name "Benkert," or any name that may simulate or resemble the name of "C. Benkert & Son," or the name "Benkert," is printed or stamped or in any way or manner attached thereto.

Fifth.—May it please your Honors to grant unto your orator all such further or other relief as the nature of the case may require and as may be in accordance with equity and good conscience.

Sixth.—May it please your Honors to grant unto your orator, not only the writ of injunction conformable to the prayer of this bill, but also the writ of subpoena directed to the said respondents, Morris Rosenthal and Samuel Feder, commanding them to appear and answer this bill of complaint and to do and receive what to your honors shall seem meet.

M. A. WHEATON,
Solicitor for Complainant.

JOHN H. ROBERTS,
Of Counsel for Complainant.

(a) Benkert vs. Feder, 34 F. R. 534; Feder v. Benkert, 44 U. S. App. 99; Desty's Fed. Proc., sec. 84.

No. 542.

Answer.

[Title of Court and Cause.]

The answer of Morris Rosenthal and Samuel Feder to the bill of complaint of William I. Benkert, complainant:

These defendants, saving and reserving to themselves all right of exception to the said bill of complaint on account of the many errors therein contained, for answer thereto or to so much and such parts thereof as they are advised by counsel it is necessary or important for them to make answer unto, answering say:

That they have no knowledge or information other than from said bill of complaint as to the partner-

ship or business of the complainant and Casper Benkert or the continuance thereof, and cannot admit or deny the allegations of said bill relative thereto, and insist that complainant make proof thereof.

Defendants say that they have no knowledge or information other than from said bill of complaint as to the sale by Casper Benkert to complainant of his interest in said alleged business, and the carrying on, ownership, and proprietorship thereof, and cannot admit or deny the allegations of said bill relative thereto, and insist that complainant make proof thereof.

Defendants say that they have no knowledge or information other than from said bill of complaint as to the business of the partnership of C. Benkert & Son, and of complainant, or of the boots and shoes manufactured and sold by them or either of them, or of the quality, quantity and price of such boots and shoes, or the mark or other designation thereof or thereon, and cannot admit or deny the allegations of said bill relative thereto, and insist that complainant make proof thereof.

Defendants say that they have no knowledge or information, other than from said bill of complaint, as to the placing as a trademark upon said boots and shoes, and to indicate the ownership and origin thereof, the words "C. Benkert & Son," and to the knowing of said boots and shoes by the name of "C. Benkert & Son," and cannot admit or deny the allegations of said bill relative thereto, and insist that complainant make proof thereof.

Defendants say that they have no knowledge or information other than from said bill of complaint as to the name of "C. Benkert & Son" being a trademark, or the ownership of said name, or the right to use and place the same upon boots and shoes, and

cannot admit or deny the allegations of said bill relative thereto, and insist that complainant make proof thereof.

These defendants and each of them deny that they have been for more than five years last past partners in trade as set forth in said bill of complaint except as follows: For the four years previous to the month of March, 1884, they, with one Bromberger, were partners in trade under the firm name of Rosenthal, Feder & Co., and in said month said Bromberger retired from the copartnership formed by them and since said month these defendants have been partners in trade as set forth in said bill of complaint.

These defendants and each of them deny that within five years, or at any time or times whatsoever, they or either of them had manufactured or sold or are now manufacturing or selling large or any quantity of boots and shoes or boots or shoes on each or either or any of which they have placed in plain or conspicuous letters or at all the name of "C. F. Benkert & Son," in imitation of the name "C. Benkert & Son" as alleged in said bill of complaint, or at all.

Defendants and each of them deny that they or either of them have stamped in sole-leather or bottoms or any other part of said boots and shoes or any boots or shoes whatsoever in plain, conspicuous letters, or otherwise, the name or words "C. F. Benkert & Son, Phila."

Defendants deny that they have manufactured or are still manufacturing said boots and shoes or any boots and shoes marked with the name of "C. F. Benkert & Son" in San Francisco, Hawaiian Islands, other domestic or foreign markets or elsewhere, and admit and show to this Court that they have sold in San Francisco and elsewhere a small quantity of boots and shoes marked "C. F. Benkert & Son," com-

prising not more than 250 dozen pairs thereof; and further state and show that the boots and shoes so sold were of an entirely different class, style, nature, and grade from the boots and shoes alleged in said bill of complaint to be manufactured by the complainant, and as such were recognized by and sold to the customers and patrons of these defendants.

Defendants say they have no knowledge or information other than from said bill of complaint as to the relative quality, cost of manufacture, and prices of sale of said boots and shoes, and the boots and shoes made by the complainant, and cannot admit or deny the allegations of said bill relative thereto, and insist that complainant make proof thereof.

Defendants and each of them deny that they have had manufactured for them as set forth in said bill of complaint large or any quantity of boots and shoes or any boots or shoes whatever on which was the printed name "C. F. Benkert & Son" or stamped "C. F. Benkert & Son, Phila.," as set forth in said bill of complaint, excepting not more than three hundred and twenty-one dozen thereof, and the defendants and each of them deny that they have sold or are still selling boots and shoes with said words printed or stamped thereon in San Francisco or elsewhere, excepting that they have heretofore sold not more that the two hundred and fifty dozen thereof aforesaid.

The defendants and each of them deny that they have placed or caused to be placed on said boots or shoes alleged to have been sold by them, or upon any other boots or shoes whatsoever, said words to wit, "C. F. Benkert & Son," for the purpose of deceiving the public generally or any other person, or causing them or any of them to believe the said boots or shoes were manufactured by the complainant or at all.

They deny that the public or purchasers generally or any of them have been deceived or have believed on account of said names being on said boots or shoes that the same were genuine or other boots or shoes manufactured by complainant, and that, being deceived as alleged in said bill of complaint, or being deceived at all, have purchased or are now purchasing, or these defendants have sold or are now selling said boots or shoes as or for genuine or other boots or shoes manufactured by the complainant. They deny that by any of the acts and doings set forth in said bill of complaint they or either of them have unlawfully or otherwise greatly or at all injured or depreciated the complainant's trade in fine or other boots or shoes or the good or other reputation or standing of said boots or shoes alleged in said bill of complaint to have been had by them.

Defendants and each of them deny that unless restrained by injunction they, by using said name on the boots and shoes sold by them, will infringe on the alleged name and trademark of the complainant, and deny that they have already at any time been doing the same.

The defendants state and show that they have sold not more than two hundred and fifty dozen of boots and shoes marked "C. F. Benkert & Son," and have realized therefrom a profit of about and not more than five hundred (500) dollars.

The defendants and each of them deny that by reason of the said alleged infringement or of any other act or doing of these defendants or either of them the complainant has suffered loss or damage to a very large or other amount, or any loss or damage whatsoever.

Without this, that there is any other matter, cause, or thing in the said bill of complaint contained ma-

terial or necessary for these defendants or either of them to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, is true, to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained,

MASTICK, BELCHER & MASTICK,
Solicitors for Defendants.
I. S. BELCHER,
Counsel for Defendants.

(a) See notes to Form No. 541.

No. 543.

Interlocutory Decree with Reference to Master to Ascertain Profits from Sale of Protected Merchandise. (a)

[Title of Court and Cause.]

At a stated term to wit: the February term, 18°8, of the Circuit Court of the United States of America of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom thereof in the city and county of San Franc'sco, on the —— day of June, 1888. P es nt: the Honorable LORENZO SAWYER, Circuit Judge.

This cause having come on to be heard upon the bill of complaint herein, the answer of the defendants, the replication of the complainant, the bill of revivor, the stipulation of the parties in regard there-

to, and the proofs documentary and written taken and filed in said cause, and having been argued by counsel for the respective parties and submitted to the Court for consideration and decision;

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed and the Court doth hereby order, adjudge, and decree, as follows, to wit: that the name of "C. Benkert & Son" has been a trade name and also a trademark upon boots and shoes for upwards of twenty-five years last past, and as such trade name and trademark is good and valid in law.

That the complainant, William J. Benkert, is and ever since the year 1876 has been, the exclusive owner of said trade name and trademark, and during all times, at the city of Philadelphia, in the State of Pennsylvania, has carried on the business under the said trade name of manufacturing and selling boots and shoes, and during all times has stamped and printed and used upon all the said boots and shoes so made and sold by him the said words "C. Benkert & Son," as a trademark.

That the original defendants herein, Samuel Feder and Morris Rosenthal, have infringed upon the said trade name and trademark and upon the exclusive rights of the complainant under the same — that is to say, by manufacturing and selling within the ten years last past, and prior to the commencement of this suit, large quantities of boots and shoes upon which they have placed in plain, conspicuous letters the name "C. F. Benkert & Son," in imitation of the name "C. Benkert & Son," as charged in the bill of complaint.

And it is further ordered, adjudged, and decreed that the complainant do have and recover of and from the defendant Samuel Feder and Amelia Rosen-

thal, executrix of the last will and testament of Morris Rosenthal, deceased, the profits, gains, and advantages which said defendants or either of them have received or made or which have arisen or accrued to them or either of them from the infringement of the said trade name and said trademark of "C. Benkert & Son" by the making, using, and selling or the making, using, or selling of said boots and shoes, having placed thereon the name "C. F. Benkert & Son," or any other name in imitation of complainant's trade name and trademark of "C. Benkert & Son."

And it is further ordered, adjudged, and decreed that the said complainant do recover of the defendants his costs and charges and disbursements in this suit, to be taxed.

And it is further ordered, adjudged, and decreed that it be referred to S. C. Houghton, Esq., the standing Master in Chancery of this Court, residing in the city and county of San Francisco, Northern District, and State of California, to ascertain and take and state and report to this Court an account of the number of boots and shoes manufactured and sold or manufactured or sold by the original defendants Samuel Feder and Morris Rosenthal, or either of them, and also the gains, profits, and advantages which the said original defendants or either of them or the estate of said Morris Rosenthal have received or made, or which have arisen or accrued to them or either of them or it from infringing the said exclusive rights of the said complainant by the manufacturing and selling, or manufacturing or selling, of boots and shoes having stamped and placed upon them the infringing trademark in imitation of the trademark of "C. Benkert & Son."

And it is further ordered, adjudged, and decreed that the complainant on such accounting have the

right to cause an examination of the defendants Samuel Feder and Amelia Rosenthal, and each of them, and their and each of their agents, servants, and workmen, or other witnesses, as may be necessary to take said accounting, and also the production of books, vouchers, and documents of which said defendants Samuel Feder and Amelia Rosenthal and their and each of their attorneys, servants, agents, and workmen may be possessed, and cause them to attend for such purposes before the said master from time to time as such master shall direct.

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued in this case against the said defendants, Samuel Feder and Amelia Rosenthal, restraining and perpetually enjoining them and each of them, and them and each of their servants, agents, clerks, and workmen, and all persons claiming or holding under or through them, from manufacturing or using or selling or in any way disposing of boots and shoes, or boots or shoes, having stamped or printed or in any way marked thereon the name of "C. F. Benkert & Son" or any other name in imitation or simulation of the said trademark "C. Benkert & Son," pursuant to the prayer of the said bill of complaint.

LORENZO SAWYER,
Judge.

(a) See note to Form No. 541; Eq. R. 55, 73, 74.

No. 544.

Final Decree Giving Judgment for Profits and of Perpetual Injunction. (a)

[Title of Court and Cause.]

In this cause the original bill of complaint having

been filed against Morris Rosenthal and Samuel Feder, and the said Morris Rosenthal and Samuel Feder having been duly served with process and filed their answer to said orginal bill of complaint; and the said Morris Rosenthal, having thereafter deceased, and a bill of revivor having thereafter been duly filed in pursuance of an order of this Court, duly made and entered, and said cause having been thereby revived and conditioned against the said Samuel Feder and Amelia Rosenthal, executrix of the last will and testament of Morris Rosenthal, deceased; and the said Samuel Feder and Morris Rosenthal having duly appeared by counsel and having filed their answer to said bill of revivor, and an interlocutory decree having been duly made and entered in this court adjudging and decreeing that the respondents were guilty of the acts of infringement of complainant's trademark charged against them in said bill of complaint, and further adjudging and decreeing that said complainant should have and recover of and from the respondents Samuel Feder and Amelia Rosenthal the gains, profits, and advantages derived from said acts of infringement; and further ordering the Master in Chancery of this court to ascertain and report to this Court an account of said acts of infringement by said Morris Rosenthal and Samuel Feder, or the estate of said Morris Rosenthal, by reason of the said acts of infringement; and also granting an injunction against said respondents Samuel Feder and Amelia Rosenthal, restraining them from further acts of infringement; and testimony, oral and documentary, having been introduced before said Master in Chancery by said parties respectively, and the same having been filed in this Court, and further testimony, oral and documentary, having been heard by this Court, and argument by respective counsel, both oral and

written, having been heard and read and duly considered by this Court; and said cause and all matters at issue therein having been submitted to this Court for decision by stipulation of the parties by the respective counsel, duly filed herein, and this Court having at the present term of said Court, to wit: on the seventeenth day of September, 1894, rendered its oral decision in pursuance of said last-mentioned stipulation, and the parties hereto having by their respective counsel stipulated and agreed in writing that the amount of net profits for which the respondents are held liable to account to complainant by said decision of this Court is $2,066.59, and said cause and all matters at issue therein having been submitted to the Court for final judgment and decree,

It is now ordered, adjudged, and decreed and the Court does hereby order, adjudge, and decree as follows:

That the name "C. Benkert & Son" has been a trade name and also a trademark upon boots and shoes for upward of twenty-five years last past, and as such trade name and trademark is good and valid at law.

That the complainant, Wm. I. Benkert, is and ever since the year 1876 has been the exclusive owner of said name and trademark and during all of said time at the city of Philadelphia, in the State of Pennsylvania, has carried on the business under the said trade name of manufacturing and selling boots and shoes, and during all of said time has stamped and printed and used upon all the said boots and shoes so made and sold by him the said words "C. Benkert & Son" as a trademark.

That the original defendants herein, Samuel Feder and Morris Rosenthal, have infringed upon the said trade name and trademark and upon the exclusive

rights of the complainant under the same by fraudulently placing or causing to be placed upon boots and shoes not manufactured by complainant, in plain, conspicuous, printed letters, the name "C. F. Benkert & Son," in imitation of the name "C. Benkert & Son" as charged in the bill of complaint, and that the said respondents Samuel Feder, Morris Rosenthal, and Amelia Rosenthal, have sold and caused to be sold three hundred and nineteen dozens of pairs of boots and shoes having upon them the said fraudulent and spurious mark "C. F. Benkert & Son."

That the net cost of said 319 dozens of pairs of boots and shoes to said respondents was $11,757.20; that the gross amount received by said respondents upon the sale of said 319 dozens of pairs of boots and shoes was $16,970; that the respondents are entitled to deduct from the gross amount received by them on the sales of said boots and shoes: Net cost, $11,757.20; on account of expenses of conducting business, $1,833.00; on account of bad debts, $583.21; on account of freight, $630.00; on account of interest paid, $100.00; total, $14,903.41.

That the net profit received by respondents from the sale of said 319 dozens of pairs of boots and shoes bearing the said fraudulent mark was $2,066.59.

It is further ordered, adjudged, and decreed that the complainant do have and he hereby has judgment against the said respondents, Samuel Feder and Amelia Rosenthal, executrix of the last will and testament of Morris Rosenthal, deceased, for the said sum of $2,066.59, the amount of net profits realized by respondents on the sale of said 319 dozens of pairs of boots and shoes, and that he have execution therefor.

It is further ordered, adjudged, and decreed that the said complainant do have and recover of and

from the said respondents herein his costs and charges and disbursements in this suit, to be taxed in the usual manner by the clerk of this court, and that he have execution therefor.

It is further ordered, adjudged, and decreed that the said respondents Samuel Feder and Amelia Rosenthal, executrix of the last will and testament of Morris Rosenthal, deceased, and each of them, their and each of their servants, agents, clerks, workmen, and all persons claiming or holding under or through them, or either of them, be and are and each of them is hereby perpetually enjoined and restrained from manufacturing or selling or in any way disposing of boots and shoes or boots or shoes having stamped or printed or in any way marked thereon the name "C. F. Benkert & Son," or any other name in imitation or simulation of the said trademark or trade name "C. Benkert & Son."

Costs taxed at $1,816.70.

JOSEPH McKENNA,
Judge.

Dated November 13, 1894.

(a) See notes to Form No. 541; Eq. R. 85, 86.

Section V.

COPYRIGHT.

No. 545.

Bill in Equity for Infringement of Copyright. (a)

[Title of Court and Cause.]

To the Hon. ————, judge of said court:

John P. Broder and Hugo V. Schlam, citizens of and residents of the United States and of the city and

county of San Francisco, in the Northern District of California, bring this their bill of complaint against the Zeno Mauvais Music Company, defendant, a corporation organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the city and county of San Francisco, in said Northern District of California, as your orators believe, and thereupon your orators complain and say:

That on or about the thirtieth day of September, 1895, your orators became the sole proprietors of a certain musical composition entitled "Dora Dean," of which one Bert Williams was the author and composer, and by whom the same was duly assigned and transferred to your orators, and of which your orators became the exclusive owners and proprietors on the said thirtieth day of September, 1895, and before the same had been published.

That on or about the fourth day of February, 1896, such proceedings were duly had by your orators that your orators did on said day secure a copyright of said musical composition and melody pursuant to the act of Congress for securing copyrights, which took effect July 8, 1870, and the amendments thereto and said copyright was duly issued to your orators under the hand and seal of the librarian of Congress, and the original record of said copyright is in the library of Congress.

That the following is a true copy of such proceedings:

San Francisco Postoffice.

Office of the Postmaster.

San Francisco, Cal., Feb. 4, 1896.

Received on this day from the firm of Broder & Schlam, for mailing to the librarian of Congress, one song, the title-page of which reads:

"Dora Dean."
Words and Music by
Bert A. Williams of
Williams & Walker,

and this certifies that the said song was mailed to the librarian of Congress for copyright purposes on this date.

FRANK McCOPPIN,
Postmaster.
Jas. A. Richardson,
Secretary.

"No. 9719 B. Library of Congress.

Copyright Office, Washington.

To wit: Be it remembered that on the tenth day of February, 1896, Broder & Schlam of San Francisco, have deposited in this office the title of a musical composition, the title or description of which is in the following words, to wit:

'Dora Dean.'
Words and Music by
Bert A. Williams,

the right whereof they claim as proprietors in conformity with the laws of the United States respecting copyrights.

A. R. SPOFFORD,
Librarian of Congress."

That a printed copy of said title was before publication deposited in the mail by your orators addressed to the librarian of Congress at Washington, D. C., and that within ten days from the publication thereof your orators did deposit in the mail addressed to the librarian of Congress at Washington, D. C., two copies of such copyright musical composition, and did within ten days after its publication deposit in the mail, addressed to the librarian of Congress, at Washington, D. C., two completed printed copies thereof of the best edition issued.

That your orators gave due notice of their said copyright by inserting in the several copies of every edition published, to wit, inscribing upon some visible portion of said musical composition or of the substance on which the same was mounted the following:

"Copyright, 1895-6 by Broder & Schlam," by inserting in the several copies of each edition of said song or musical composition or melody published the following words, viz., "Copyright 1895-6 by Broder & Schlam."

That your orators beg leave to make said original copyright, the copy thereof, and the original assignment a part of this their bill of complaint, and refer to such original record.

That your orators are and ever since the date of September 30, 1895, have been the proprietors of said musical composition or melody, and have offered for sale and sold the same with the said notice of such copyright printed on the title page thereof as hereinbefore set forth.

That by reason of the long experience and great care of your orators in their business as publishers of and dealers in musical compositions, songs, and melodies, and the peculiar and pleasing nature, arrange-

ment, composition, and quality of the music or melody of said musical composition, both to the public and persons of musical taste and culture, the said song, music and melody has become popular and widely known and much sought after, and has acquired a high and popular reputation, and has commanded and still commands an extensive sale at the city of San Francisco in said district and throughout the United States, in the cities and towns thereof, which has been and still is a source of great profit to your orators.

That said song and melody are known as such to the public by reason of the pleasant and harmonious strains and notes of the melody to the buyers and users thereof, and the dealers in music to the community and persons of musical culture and taste and by your orators copyrighted as aforesaid.

That notwithstanding the quiet use, enjoyment, and profits of your orators of said song, music, and melody, and of the copyright protecting and reserving the same and all rights thereunder to your orators, the defendant, the Zeno Mauvais Music Company, well-knowing the premises and of your orators' copyright, and willfully disregarding your orators' rights, and thereafter and in the year 1896, wrongfully and fraudulently prepared, published, and offered for sale and did sell at the city of San Francisco and elsewhere in various cities of the United States a musical composition, song, and melody, entitled "Ma Angeline," the music or melody of which said song is an imitation of the music and melody of your orators' music or melody, copyrighted as aforesaid by your orators in 1896, under the title of "Dora Dean," all of which was and still is being done with intent to deceive and defraud the public and persons of musical taste and culture and the buyers and

users thereof; the defendant, the Zeno Mauvais Music Company has published and sold and is publishing and selling said song, music, and melody entitled "Ma Angeline," the arrangement and strains of the music and melody of which are substantially the same as and indentical with your orators' aforesaid copyrighted composition.

That such imitation of the strains, music, and melody of said publication of the melody of the defendant is calculated to deceive the public and persons of musical taste and culture and the purchasers and users of your orators' said song, music, and melody, and actually has and still does mislead many of them to buy said publication entitled "Ma Angeline," published and sold by the defendant, because it has or contains the same music or melody published and sold by your orators, greatly to the diminution of their said business and profits.

That by reason of the premises and the wrongful acts of the defendant as aforesaid your orators have been injured to their damage $5,000, and are still being injured by the continued sale and publication by the defendant of the music and melody published and sold as aforesaid entitled "Ma Angeline," though defendant was duly notified by your orators a long time prior to the commencement of this action that your orators' song, music, and melody had been duly copyrighted by your orators, to the injury of your orators, the defendant has thereby unjustly and unlawfully made and still makes great gains and profits which belong of right and according to law to your orators and to your orators' great damage and injury.

All of which acts and doings are contrary to equity and good conscience, and done to the manifest injury of your orators in the premises.

May it please your Honor meantime to restrain the defendant from publishing, selling, or offering for sale the said musical composition, song, or melody entitled "Ma Angeline," and that your orators may move for such injunction upon proper notice during the pendency of this suit.

May it please your Honor to grant unto your orators a writ of subpoena issuing out of and under the seal of this honorable Court, directed to the said defendant, The Zeno Mauvais Music Company, commanding said defendant on a certain day therein to be named to be and appear before this honorable Court and make answer unto this bill of complaint and stand to perform and abide such further order, direction and decree as may be made against said defendant, and to do and receive what your Honor shall seem meet.

And your orator will, etc.

_____,

Solicitor for Complainants.

(Verification.)

[Endorsed]:

Upon giving a bond to be approved by the Court, in the sum of $1.000, let a preliminary restraining order be issued in pursuance of the prayer of the bill, to continue until the further order of the Court.

JOSEPH McKENNA,

Circuit Judge of the Northern District of California.

(a) Desty's Fed. Proc., sec. 84; Broder v. Zeno Mauvais Co., 88 Fed. Rep. 74.

APPENDIX TO CHAPTER IV.

Scheme of Proceedings on a Bill of Foreclosure and Sale and for Appointment of a Receiver.

No. of Form.

515. Notice of application for leave to file bill.

No. of Form.
516. Affidavit in support.
331. Bill.
507. Praecipe for subpoena.
508. Subpoena.
509. Marshal's return.
511. Appearance of defendant.
512. Praecipe for appearance.
468. Order appointing receiver.
412. Motion for leave to file amended or amendment to bill and notice.
442. Order granting leave.
343. Amendment.
344. Demurrer.
366. Plea.
377. Answer.
444. Order allowing amendment of answer.
407. Exceptions to answer.
419. Notice of hearing of exceptions.
408. Replication.
483. Motion for reference to a master.
484. Order of reference.
485. Master's summons.
486. Master's certificate.
487. Master's report.
495. Order confirming master's report.
426, 427. Decree.
496. Writ of venditioni exponas.
497. Master's notice of sale.
498. Affidavit of publication.
499. Affidavit of posting.
500. Master's report and return of sale.
501. Motion for confirmation of sale.
504. Objections to confirmation.
502. Order confirming sale.
506. Master's report of execution of deed.

CHAPTER V.

DEPOSITIONS.

(Generally.)

Section I.

No. 546.

Notice of Taking Testimony Orally. (a)

[Title of Court and Cause.]

Notice is hereby given that we shall proceed to take proof for final hearing on the part of the complainant under the sixty-seventh rule of the supreme court for courts in equity as amended, or in accordance with the statutes in such case made and provided, and in pursuance of the rules and practice of this Court, orally, before ————, an examiner of this court, or some other proper officer under said statutes and rules, at ————, ————, on the —— day of ————, at the hour of ————.

The names and residences of witnesses who live at a greater distance from the place of trial than one hundred miles whom it is intended to examine are stated below.

You are invited to attend and cross-examine any witnesses produced. The examination will be adjourned from day to day and to such time and place as may be required, without further notice.

Dated ————.

————,

Complainants' Solicitors.

To ————,

Defendants' Solicitors.

Names and residences of witnesses.

(a) Eq. R. 67; Desty's Fed. Proc., sec. 380.

No. 547.

Order Referring Cause to Master in Chancery. (a)

At a stated term, to wit, etc.

Present, the Honorable, etc., United States District Judge.

[Title of Cause.]

It is ordered that this cause be, and the same hereby is, referred to ————, Master in Chancery, and he is hereby appointed examiner to take the testimony in this cause and report to this Court.

(a) Eq. R. 67, 68; Desty's Fed. Proc., secs. 380, 381 a.

No. 548.

Report of Master in Chancery. (a)

[Title of Court and Cause.]

To the Honorable Judges of the United States Circuit Court for the District of ————.

I hereby certify and report that, in pursuance of an order made herein on the —— day of ———, 18,—, I proceeded to take the testimony in the above-entitled cause, and that the same, embracing four hundred and thirty-four (434) pages, together with Exhibits "A," "B," "C," "G," "H," "I," "K," "L," "M," "N," "O," "P," and "R" is herewith transmitted.

All of which is respectfully transmitted.

————,

Examiner in Chancery.

TESTIMONY.

[Title of Court and Cause.]

Appearances: For complainant, ————, Esq., and ————, Esq.

For defendants and for ————, intervenor, ————, Esq.

Date ————.

Transcript of evidence.

————,
Stenographer.

Depositions of Witnesses Produced, Sworn, and Examined on the Part of the Complainant.

The parties being present by their respective counsel at the office of the examiner at the city of ———, county of ————, and State of ————, the following proceedings were had:

(a) Eq. R. 67.

No. 549.

Stipulation for Use of Testimony at Trial Taken Before Filing of Amended Bill and Answer.

[Title of Court and Cause.]

It is hereby stipulated and agreed by and between the attorneys for the plaintiff and the attorneys for the defendants in the above-entitled cause that the proof heretofore taken in said cause before ————, examiner, may be used on the trial of the above cause to the same effect as if said proof had been taken subsequently to the filing of the amended bill and the answer thereto. And either party desiring to take further proof may do so under the rules of practice in equity causes in the said Court.

Witness our hands this —— day of ———, A. D. 18——.

———,
Attorneys for plaintiff.

———,
Atty. for ———.

No. 550.

Notice to Take Evidence Orally. (a)

(Short Form.)

In the Circuit Court of the United States for the District of Oregon.

The United States,
Complainant,
vs.
The Oregon & California Railroad Company, John A. Hurlburt, and Thomas L. Evans,
Defendants.

To the above-named complainant, and to Daniel R. Murphy, U. S. District Attorney, and to John M. Gearin, solicitor for complainant:

You and each of you will take notice that the defendants above named desire the evidence to be adduced in the above-entitled cause to be taken orally.

Dated July 24, 1894.

E. C. BRONAUGH,
L. L. McARTHUR,
W. D. FENTON.
E. C. BRONAUGH, Jr.
Solicitors for defendants.

State of Oregon,
County of Multnomah. } ss.

Due service of the within notice is hereby accepted in said county, Oregon, this twenty-fourth day of July, 1894, by receiving a copy thereof, duly certified to as such, by W. D. Fenton, of solicitors for defendants.

D. R. MURPHY,
Solicitor for complainant.

(a) Eq. R. 67.

No. 551.

Notice of Motion for Appointment of Special Examiner. (a)

[Title of Court and Cause.]

To ————, Esq., solicitor for defendant:

Please take notice that at a ———— term of this Court, to be held on the —— day of ———, 18——, at ————, at —— o'clock, or as soon thereafter as counsel can be heard, the above-named plaintiff will move the Court for an order that ———— be appointed special examiner herein under the sixty-seventh Rule in Equity as amended, to take the deposition of witnesses on behalf of said plaintiff.

Dated ————.

————,
Solicitors for plaintiffs.

(a) Eq. R. 67; Desty's Fed. Proc., secs. 380, 381, 381 a.

No. 552.

Order Fixing Time for Taking Testimony. (a)

[Title of Court and Cause.]

Now, at this day, upon motion of Mr. W. D. Fenton, of counsel for the defendants, the plaintiff being present by its counsel, Mr. Daniel R. Murphy, United States attorney, and agreeing thereto, it is ordered that the plaintiff be, and it is hereby, allowed thirty days from this date in which to take its evidence herein; that after notice from the plaintiff that its evidence in chief is taken, the defendants be, and they are hereby, allowed sixty days in which to take their testimony herein, and that, after notice shall have been given to said plaintiff that the said evidence is taken by said defendants, the plaintiff be, and it is hereby, allowed thirty days further time in which to take its testimony in rebuttal; and it is further ordered that said evidence be taken orally, and that either party is authorized to apply to the Court for further time, or for modification of this order, upon sufficient cause being shown therefor.

(a) Eq. R. 67.

No. 553.

Order Appointing Special Examiner. (a)

[Title of Court and Cause.]

Now, at this day, comes the plaintiff, by Mr. John M. Gearin, special counsel, and the defendants by Mr. W. D. Fenton, of counsel, and thereupon said defendants move the Court for an order appointing some qualified person at the city of Portland, Oregon, to act as examiner of this Court to take orally such depositions and testimony as the parties hereto

desire to be taken at said city of Portland. It is, therefore, ordered that Mr. F. S. Lafferty, of Portland, Oregon, be, and he is hereby, appointed a special examiner of this Court, with power and authority to take and transmit to this Court such depositions and testimony in this cause as the parties hereto desire to be taken at said city of Portland, and at such time as may suit the convenience of said examiner and of the parties hereto; and that said examiner extend said testimony when so taken, and report the same to this Court with all convenient speed, said testimony, when so taken, to be used upon the trial of this cause.

CHARLES B. BELLINGER,
Judge.

(a) Eq. R. 67.

No. 554.

Order to Show Cause why Time for Taking Testimony Should not be Extended. (a)

[Title of Court and Cause.]

On reading the affidavits of ———— and ————, and on motion of F. S., solicitor for the defendant in the above-entitled cause, it is hereby ordered that copies of the same, with a copy of this order, be served on the solicitor for the plaintiff in said cause on or before the —— day of ————, 18——, and that said plaintiff show cause, if any he have, at ————, on the —— day of ————, 18——, at —— o'clock, ——, why the time allowed for taking testimony on behalf of the defendant in said cause should not be extended to and including the —— day of ————, 18——.

————,
Judge.

(a) Eq. R. 69.

No. 555.

Order Extending the Time for Taking Testimony. (a)

[Title of Court and Cause.]

On reading and filing the defendant's order to show cause and the affidavits of ———— and ———— thereto annexed, and after hearing ————, of counsel for the plaintiff, and ————, of counsel for the defendant, it is ordered that the time allowed for taking testimony on behalf of the defendant in the above-entitled cause be extended to and including the —— day of ————. 18——, and that the plaintiff have —— days thereafter within which to take testimony in rebuttal.

(a) Eq. R. 69.

No. 556.

Examiner's Certificate at Close of Testimony. (a)

District of ————.—ss.

I, ————, examiner, hereby certify that the foregoing testimony in the above-entitled cause was taken before me at the times and places in record thereof indicated; that before testifying each of the several witnesses was by me severally and duly sworn to tell the truth, the whole truth, and nothing but the truth; that said testimony was taken in shorthand, and by consent of parties the signature of the respective witnesses to their extended depositions was waived.

————,
Examiner.

(a) Eq. R. 67.

No. 557.

Stipulation Reserving Questions of Relevancy and Competency of Testimony.

[Title of Court and Cause.]

Pursuant to stipulation, the parties hereto appearing by their counsel, M., representing the plaintiff, and O. and P. representing the defendant, appeared before ————, special examiner, on this —— day of ———, 18——, in the United States Court building, and thereupon the following proceedings were had on behalf of the defendant.

It was thereupon stipulated by the parties hereto that all questions as to the relevancy and competency of the evidence offered at this hearing be considered reserved.

(Set out proceedings.)

No. 558.

Order Appointing Special Examiner to Take Testimony of Distant Witnesses. (a)

[Title of Court and Cause.]

December 11, 1893.

Now, at this day, comes G. W. Hunt, intervenor herein, by Mr. C. E. S. Wood, of counsel, and C. B. Wright, purchaser of the property herein, by Mr. Lewis L. McArthur, of counsel, and said C. B. Wright, moves the Court for an order appointing some qualified person at Philadelphia, in the State of Pennsylvania, authorizing and empowering him, as a special examiner of this Court, to take and transmit to this Court the testimony of C. B. Wright, J. H. Anderson, W. H. Clark, and C. B. Wright, Jr., witnesses on

the part of said C. B. Wright, purchaser, to be used on the trial of this cause; and it appearing necessary, to prevent a failure of justice, that the testimony of said witnesses should be taken:

It is ordered that E. Z. Brailey, of Philadelphia, Pennsylvania, be, and he is hereby, appointed a special examiner of this Court, and that he be, and he is hereby, authorized and empowered to take and transmit to this Court the testimony of the above-named witnesses, in answer to oral questions to be put to said witnesses by the respective parties at the time of taking such testimony.

(Signed) CHARLES B. BELLINGER,
Judge.

(a) As to the power of the Court to make this order, see In re Allis, 44 Fed. Rep. 216; Johnston St. Paul Co. v. North Branch Steel Co., 48 Fed. Rep. 191; In re Spofford, 62 Fed. Rep. 443.)

No. 559.

Report of Special Examiner.

[Title of Court and Cause.]

United States of America }
District of Pennsylvania. } ss.

I, E. Z. Brailey, stenographic commissioner Court of Common Pleas No. 4, county of Philadelphia, State of Pennsylvania, special examiner named in the annexed commission, do hereby certify that on the nineteenth day of January, 1893, at the city of Philadelphia, Pa., I was attended by Thomas C. Rambaut, Esq., of counsel for George W. Hunt, and by Richard C. Dale, Esq., of counsel for Charles B. Wright, opposing intervenor, and by the witnesses

Charles B. Wright, James H. Anderson, and Charles B. Wright, Jr., and the said witnesses, who were of sound mind and lawful age, having been by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause, gave their testimony, which, by consent of counsel for the respective parties, was taken down stenographically, in the presence of the witnesses and from their statements, and the said stenographic notes were afterward reduced to writing by a typewriter, and the testimony as extended was thereafter read over, corrected, and signed by said witnesses respectively.

In witness whereof I have hereunto set my hand and seal this nineteenth day of September, A. D. 1894.

[Seal] E. Z. BRAILEY,

Special examiner and stenographic commissioner Court of Common Pleas No. 4, county of Philadelphia, State of Pennsylvania.

No. 560.

Depositions. (a)

[Title of Court and Cause.]

Philadelphia, Friday, January 19, 1894, 11 A. M.

Depositions of witnesses taken on behalf of Charles B. Wright, an intervenor, under a commission issued to E. Z. Brailey, as special examiner, in the city of, etc.

Sworn and subscribed before me this thirty-first day of January, 1894.

E. Z. BRAILEY,
Special Examiner.

I hereby certify that the foregoing depositions were taken by me stenographically upon the nineteenth day of January, 1894, at which time the witnesses were by me duly sworn; that their testimony was afterward reduced to typewritten form, and that the same was read over by them and signed and sworn to as correct on the thirty-first of January, 1894.

E. Z. BRAILEY,
Special Examiner.

(a) Eq. R. 67.

No. 561.

Stipulation for Annexing Account to Depositions.

[Title of Court and Cause.]

It is agreed that the annexed printed account shall be annexed to the deposition of J. H. Anderson taken before E. Z. Brailey, commissioner, with the same effect as if the original account made by said J. H. Anderson had been produced and offered in evidence, but without prejudice to objections taken at the time and noted.

Dated ———, 18—.

———,
Of counsel for George W. Hunt, intervenor.

———,
For C. B. Wright.

Section II.

DEPOSITIONS UNDER COMMISSION.

No. 562.

Order for Dedimus Potestatem. (a)

[Title of Court and Cause.]

On reading and filing (b) affidavit of plaintiff's attorney and notice of motion, with proof of due

service thereof on attorneys for defendant ————, A. K., Esq., appearing for the plaintiff, and V. P., Esq., for the defendant ————,

It is, on motion of T. R. Esq., of counsel for G. H., intervenor herein, ordered that a dedimus potestatem be issued in this cause out of this Court, directed to John A. Shields, clerk of the United States Circuit Court of New York, at the City of New York, to examine ———— Searles, or such other officer or employee of the Farmers' Loan & Trust Company, and William Stewart Tod, or such other member or employee of the firm of I. Kennedy Tod & Co., under oath, as witnesses herein.

It is further ordered the examination above provided for shall take place during the months of ——— and ———, and at such times within said months as is hereinafter designated.

It is further ordered that either party to this action shall have liberty to examine not only the witnesses herein named, but any other witnesses that either party may desire to examine, at the place aforesaid; provided, that the names and places of residence of said witnesses shall be given to the attorney of the opposite side two days before such examination.

It is further ordered that all directions herein contained as to time, place, and manner of examination of said witnesses may be changed or modified by the written consent of the counsel for the respective parties.

It is further ordered that the examination of all witnesses under this commission shall be oral, or taken by question and answer, in the usual manner of taking oral depositions, by examination, cross-examination and redirect examination, that the testimony given under such examination shall be re-

duced to writing signed by the witnesses and certified by the commissioner and by him transmitted by mail to the clerk of this Court at the City of ————, unless otherwise mutually agreed upon by said counsel for both parties.

And it is further ordered that all testimony taken under the commission provided for herein shall be taken subject to all legal objections at the trial of this action.

————,
Judge.

(a) Desty's Fed. Proc., secs. 385, 387; Eq. R. 67, 68.
(b) For form of affidavit consult Form No. 565.

No. 563.

Writ of Dedimus Potestatem. (a)

In the Circuit Court of the United States for the District of Oregon.

The President of the United States of America, to John A. Shields, Clerk of the United States Circuit Court, New York, Greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you full power and authority diligently to examine W. D. Searles, or such other officer or employee of the Farmers' Loan and Trust Company, and William Stewart Tod, or such other member or employee of the firm of J. Kennedy Tod and Company, and such other persons as the intervenor Hunt may desire to produce to give testimony, provided at least five days' notice be given to the intervenor Wright, or his attorneys, of the time and place of taking such testi-

mony, each upon his corporal oath or affirmation, before you to be taken, orally as a witness on the part of the petitioner Chester A. Congdon, in a certain cause now pending undetermined in the Circuit Court of the United States of America for the District of Oregon, wherein the Farmers' Loan and Trust Company is plaintiff and the Oregon and Washington Territory Railroad Company is defendant, on petition of Chester A. Congdon, and we do hereby require you before whom such testimony is to be taken, to reduce the same to writing, and to close it up under your hand and seal, and direct it to the clerk of the above-entitled court, at Portland, in the District of Oregon, as soon as may be after the execution of this commission; that you return the same when executed as above directed, with the title of the cause indorsed upon the envelope of the commission.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, at Portland, in said district, this eighth day of August, A. D. 1893.

[Seal] R. H. LAMSON,
Clerk.
By G. H. Marsh,
Deputy.

(a) Desty's Fed. Proc., secs. 385, 387; Eq. R. 67.

No. 564.

Commissioner's Return. (a)

[Title of Court and Cause.]

United States of America, }
Southern District of New York. } ss.

I, John A. Shields, Clerk of the United States Circuit Court for the Southern District of New York,

and commissioner named in the commission hereto annexed, do hereby certify that on the twenty-seventh day of October, 1893, at the city of New York, I was attended by ————, Esq., of counsel for ————, and ————, Esq., of counsel for ————, opposing intervenor, and by the witnesses Whittlesey D. Searles, and William Stewart Tod, and the said witnesses, who were of sound mind and lawful age, having been by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause, gave their testimony, which by consent of counsel for the respective parties was taken down by a stenographer appointed by me for that purpose, in the presence of the witnesses and from their statements, and the said stenographic notes were afterward reduced to writing by a typewriter, and the signatures of the witnesses to the same being waived by consent of counsel for the respective parties.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said commission named nor in any way interested in the event of the cause named therein.

In testimony whereof, I have hereunto set my hand and seal this —— day of ————, A. D. 18——.

[Seal] JOHN A. SHIELDS.

Clerk of the Circuit Court of the United States for the Southern District of New York, and Commissioner, etc.

(a) Eq. R. 67; Desty's Fed. Proc., secs. 385, 387.

Section III.

TESTIMONY DE BENE ESSE.

No. 565.

Affidavit to Obtain Commission for Examination of a Witness Under Eq. R. 70. (a)

[Title of Court and Cause.]

A B, being duly sworn, says that he is the complainant in the above-entitled cause; that he is advised by his counsel and verily believes that the testimony of ————, at present of ————, is material and necessary for this deponent in the prosecution of such cause; that the said ———— is bound on a voyage to sea (or, is going out of the country, or, is so aged or is so infirm as to render it probable that he will not be able to attend as a witness on the trial of such cause; or is a single witness to a fact material for this deponent as aforesaid).

Sworn to before me this —— day of ————.

(a) Eq. R. 70; Desty's Fed. Proc., sec. 382.

No. 566.

Affidavit to Obtain an Order for Examination of Witnesses De Bene Esse Under Rev. Stats. U. S. 863. (a)

[Title of Court and Cause.]

A B, being duly sworn, says that he is the plaintiff in the above-entitled cause; that he is advised by counsel and verily belives that the testimony of ————, at present of ————, is material and necessary for this deponent in the prosecution of such cause; that the said ———— lives at ———— more than one hundred miles from (place of

trial of cause), where the court at which this deponent expects the said cause will be tried is to be held. And this deponent further says that as he is informed and believes Y Z, the above-named defendant, resides at ————, about —— miles distant from (place of examination), the place where the examination of said witness is expected to be taken; and that, as he is also informed and believes, O, the attorney of the said Y Z, resides at ————, about —— miles from (the place of examination) aforesaid.

Sworn this —— day of ———, before me.

(a) Desty's Fed. Proc., sec. 382; Eq. R. 70.

No. 567.

Notice of Deposition Under Rev. Stats. U. S. 863.

(a)

[Title of Court and Cause.]

Please take notice that the complainant herein will take the testimony of P, Q, and R, all of whom reside at ————, and others, each and all of whom reside more than one hundred miles from the place of trial herein and more than one hundred miles from any place at which a circuit court of the United States for the ——— District of ———, is appointed to be held by law, at the final hearing, for use on behalf of the complainant before ————, Esq., a ——— of ———, who is not of counsel nor interested in this cause, at the office of ————, in the said city of ————, on the —— day of ———, 18——, at the hour of ——, and thereafter, from day to day, as the taking of the depositions may

be adjourned; and such testimony will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States, and the Equity Rules.

Dated ————.

————,

Complainants' Solicitors.

To ————,

Defendants' Solicitor.

(a) Desty's Fed. Proc., sec. 382; Eq. R. 70.

No. 568.

Notice for Examination of Witness De Bene Esse.

(a)

[Title of Court and Cause.]

To ————, Esq., Solicitors for Defendant:

Please take notice that the deposition de bene esse of ————, who resides more than one hundred miles from ————, where the court at which the above-entitled cause will be tried is to be held, the said ———— being ———— [here set out reason for taking the deposition] will be taken, to be read in evidence at the trial of the said cause on the part of the plaintiff herein, before ————, United States commissioner, or ————, at his office ——— ———, on the —— day of ———, 18——, at —— o'clock on that day, and continuing from day to day until completed.

Dated ———, 18——.

————,

Solicitors for Plaintiff.

(a) Eq. R. 70; Desty's Fed. Proc., sec. 382.

No. 569.

Notice to the Opposite Party of Examination De Bene Esse. (a)

[Title of Court and Cause.]

Sir:

You are hereby notified that ———— will be examined de bene esse before me at ————, on ———, the —— day of ———, 18——, at —— o'clock as a witness for the above-named plaintiff according to the act of Congress in such case made and provided, at which time and place you are entitled by law to be present and to put interrogatories to the said witness.

Dated ————.

To C D, the above-named ————, defendant, and ————, his attorney.

(a) Desty's Fed. Proc., sec. 382.

No. 570.

Subpoena of Witness De Bene Esse. (a)

[Title of Court and Cause.]

To ————:

Please take notice that you are required to appear before me at my office ————, on the —— day of ———, 18——, at —— o'clock —— of that day, then and there to be examined de bene esse on the part of the plaintiff in the above-entitled cause. You are hereby required to be present to testify at the time and place above-mentioned.

Witness my hand and official seal this —— day of ———, 18——.

(a) Desty's Fed. Proc., sec. 382; Eq. R. 67.

No. 571.

Caption for Depositions De Bene Esse. (a)

The United States of America,
————District of ————,
State of ————,
County of ————. } ss.

The examination of witnesses de bene esse, beginning on the —— day of ———, 18——, on behalf of the plaintiff, before me (official title), at my office at ————, in a certain suit now pending in the ——— Court of the United States for the ——— district of ————, in the district aforesaid, wherein ———— is plaintiff and ———— is defendant. ————, a witness produced on behalf of the plaintiff, being first duly sworn, deposes and says as follows:

Etc., etc.

Certificate at Close.

I, the above-named ———, do hereby certify that pursuant to the annexed notice issued and served in the above-mentioned cause, wherein ———— is plaintiff and ———— is defendant, I was attended at my office aforesaid by ————, of counsel for the said plaintiff, and also by ————, of counsel for said defendant, on the several days and dates hereinbefore stated; that the aforenamed witnesses ————, who were of sound mind and lawful age, were by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, and they thereupon testified as is above shown, and that the depositions by them subscribed as above set forth were by me (b) reduced to writing in the presence of the witnesses themselves, and from their statements, and were subscribed by the said witnesses in my presence,

and were taken at the place in the annexed notice specified and at the times as set forth, adjournments being had or taken from day to day as provided in said notice; and that all was so done, written, and signed in the presence of said counsel for said plaintiff and defendant.—I further certify that the reason for taking said depositions was and is, and the fact was and is that (c) [all of the deponents live at ——— ———, more than one hundred miles from the place where the said suit is appointed by law to be tried]; that I am neither of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause; and that, it being impracticable for me to deliver said depositions and the exhibits thereto attached with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand, and speedily and safely transmitted to the said court for which it was taken, and to remain under my seal until then opened.

As witness my hand and seal this ———, etc.

———,

(Official title.) ———.

(a) Desty's Fed. Proc., secs. 383, 384.

(b) This is imperative, see Rev. Stats. U. S. 864, unless there is a stipulation—see 41 Fed. Rep. 121.

(c) If the deposition is taken by reason of any other of the causes mentioned in Rev. Stats. U. S., 863, so state it.

No. 572.

Attachment Against a Witness for Disobeying Subpoena. (a)

The President of the United States of America to the Marshal of the ——— District of ———, Greeting:

You are hereby commanded that you attach ——— ———, if he may be found in your district, and bring him forthwith (or, on the —— day of ———) personally before the Judge of the Circuit Court of the United States for the ——— District of ———, held at ———, in the city of ———, in the said district, to answer for certain trespasses and contempts in not obeying our writ of subpoena to him directed and on him duly served, commanding him to appear (insert the direction contained in the subpoena; and you are further commanded to detain him in your custody until he shall be discharged by the said court. And have you there this writ.

Witness, etc.

(a) Desty's Fed. Proc., sec. 382; Eq. R. 67.

Section IV.

INTERROGATORIES.

No. 573.

Stipulation for Taking Depositions by Interrogatories Before a Foreign Notary.

[Title of Court and Cause.]

It is stipulated between the parties hereto that the depositions of G R and E. C, witnesses for the defendant, residing at ———, England, upon the interrogatories and cross-interrogatories hereto annexed, may be taken by virtue of this stipulation (and without commission or other authority or power) by any notary public there residing, at such time as said notary may fix; and the taking of said depositions may be adjourned from time to time to suit the convenience of said notary and said witnesses, provided

that nothing herein contained shall unreasonably delay the trial of this action.

The certificate and seal of said notary shall be sufficient proof of his name and official character, without other or further authentication; all other formalities being hereby expressly waived.

Said deposition when taken, shall be mailed by said notary to the clerk of the above-entitled court, ——— ———, U. S. A., and may be read in evidence by either party, subject only to objection as to the competency, materiality, or relevancy of the testimony set forth therein.

Dated ————, 18—.

————,
Plaintiff's Attorneys.

————,
Attorneys for Defendant.

No. 574.

Interrogatories. (a)

[Title of Court and Cause.]

Interrogatories, to be propounded to G R and E C, witnesses for the defendant in the above-entitled action, residing at ————, England:

First Interrogatory.

What is your name, age, occupation, and place of residence?

Second Interrogatory.

What, if any, position did you hold in the employ of the defendant, the ———— Company, on October 1, 18—, and where were you so employed?

Third Interrogatory.

If you answer the second interrogatory that you were on said day employed in conducting the defendant's business at ————, in the capacity you mention, you may state how long you held such position at ————, prior to October 1st, and whether you have held it since, and if so to what time.

Seventeenth Interrogatory.

Do you know or can you set forth any matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(a) Eq. R. 71; Desty's Fed. Proc., sec. 385.

No. 575.

Cross-interrogatories. (a)

[Title of Court and Cause.]

Cross-interrogatories to be propounded to S R and E C, witnesses for the defendant in the above-entitled action, residing at ————, England.

First Cross-interrogatory.

You are working, you say, for the ———— Company of the United States, or that you were on October 1, 1891?

Second Cross-interrogatory.

Do you say that, etc., etc.

(a) Desty's Fed. Proc., sec. 385.

No. 576.

Certificate and Return to Interrogatories and Cross-interrogatories.

[Title of Court and Cause.]

To all to whom these presents shall come:

I, Wellington Dale, notary public, residing and practicing at ————, in the county of ————, England, do hereby certify that pursuant to the stipulation signed by the attorneys for the above-named plaintiff and defendant, and dated the —— day of ———, 18——, G R and E C, the witnesses named in the said stipulation, appeared before me on the fifteenth and sixteenth and eighteenth days of November, instant, when I took and completed their answers or depositions to the interrogatories and cross-interrogatories propounded by the said attorneys respectively in the above-named action, the said answers or depositions being hereunto annexed, and I further certify that previous to such answers or depositions being taken I duly administered to the said G R and E C the following oath: "You and each of you are true answers to make to all such questions as shall be asked you and each of you upon these interrogatories and cross-interrogatories without favor or affection to either party and therein you and each of you shall speak the truth, the whole truth, and nothing but the truth. So help you God."

In testimony whereof, I, the said notary have hereunto subscribed my name and affixed my seal of office at ———— aforesaid this ——— day of November, 1893.

[Seal] WELLINGTON DALE.
Notary Public, ————.

[Title of Court and Cause.]

Answers to Interrogatories by G R.

Answers to interrogatories propounded to G R and E C, witnesses for the defendant in the above-entitled action, residing at ————, England, taken by Wellington Dale, of ————, aforesaid, notary public:

The said G R, being first duly sworn, on oath deposes and says:

In Answer to the First Interrogatory.

G R, thirty-nine years of age, superintendent of the ———— Company at ————, and I reside at ————.

Second Interrogatory.

Superintendent, and I was then employed at ——.

Third Interrogatory.

Just over ten years prior to the first of October last, and since that time to the present date.

Etc., etc.

Seventeenth Interrogatory.

No.

G R.

Sworn at ————, England, this eighteenth day of November, 1893, before me.

[Seal] WELLINGTON DALE.
Notary Public.

[Title of Court and Cause.]

Answers to Cross-interrogatories by G R.

Answers to cross-interrogatories propounded to G R and E C, witnesses for the defendant in the above-entitled action, residing at ————, England, taken by Wellington Dale, of —— —— aforesaid, Notary Public.

The said G R, in answer to the first cross-interrogatory, says:

Yes.

Second Cross-interrogatory.

I do not say, etc. etc.

Sworn at ————, this eighteenth day of November, 1893, before me.

WELLINGTON DALE,
Notary Public.

No. 577.

Letters Rogatory. (a)

United States of America,
——— District of ————. } ss.

The President of the United States of America to the (president of the foreign court or as the case may be), Greeting:

Whereas, a certain suit is pending in our circuit court for the ——— district of ————, in which A B is plaintiff and X Y is defendant, and it has been suggested to us that justice cannot be completely done between the parties to said suit without the testimony of [when the names and addresses of the witnesses are known, say,] (a) P, Q and R, who reside respectively at ————, all within your jurisdiction [if names and addresses are not known, say,] (b) certain witnesses residing within your jurisdiction.

We therefore request you that in furtherance of justice you will by the proper and usual process of your Court cause (a) (see above) said P, Q, and R (or) (b) (see above) such witness or witnesses as shall be named or pointed out to you by the said parties or

either of them, to appear before you or some competent person by you for that purpose to be appointed and authorized, at a precise time and place by you to be fixed, then and there to make answer on their oaths and affirmations to the several interrogatories hereunto annexed; and that you will cause their depositions to be committed to writing and returned to us under cover addressed to the clerk of the Circuit Court of the United States for the ——— District of ————, at ————, duly closed and sealed up with these presents, and we shall be ready and willing to do the same for you in a similar case when required.

Witness Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, at the city of New York, the —— day of ———, 18——.

————,
Clerk.

(a) Desty's Fed. Proc., sec. 394.

Section V.

MISCELLANEOUS.

No. 578.

Motion to Strike Out Part of Deposition.

[Title of Court and Cause.]

Now comes the defendant, and moves to strike from the deposition of William Williams the following viz:

All of the questions Nos. 2, 3, 4, 5, and 6, on page 2, together with the answers thereto, and the questions Nos. 1, 2, 3, 4, 5, on page 3, together with the

answers thereto, and all of the questions and answers of witness on page 4; also strike out all testimony of said witnesses on pages 5, 6, and 7, for the reason that the same is incompetent, irrelevant, and immaterial, and that the witness states that he was not in or acquainted with the Williams' stope until two or three days after the accident.

Also strike out all cross-examination for the reason aforesaid.

W. B. HEYBURN,
Atty. for Defendant.

No. 579.

Motion to Strike Out Part of Deposition.

[Title of Court and Cause.]

Now comes the defendant in the above-entitled action and moves to strike from the deposition of Joseph Trainer, a witness examined on behalf of the plaintiff upon deposition, as follows.

Strike out interrogatory No. 12 and the answer thereto, for the reason that the said interrogatory and said answer are directed to a conversation alleged to have been had by the witness with Patrick Curran, who is now deceased.

No. 580.

Order Striking Out Parts of Depositions.

At a Stated Term, etc.

Present: Hon. ————, Judge.

[Title of Cause.]

On this day the defendant's motion to strike from the depositions on file in this cause came on to be

heard, and upon consideration the Court ordered that said motion be sustained in part and overruled in part.

To the ruling of the Court in striking out part of the deposition of Wm. Williams, the plaintiff by his counsel excepted.

To the ruling of the Court in striking out part of the deposition of Joseph Trainer, the plaintiff by his counsel excepted.

To the ruling of the Court in allowing part of the deposition of Wm. Williams, which said defendant had moved to strike out, the defendant by its counsel excepted.

To the ruling of the Court in allowing part of depositions of Joseph Trainer, which said defendant had moved to strike out, the defendant by its counsel excepted.

No. 581.

Motion to Suppress Depositions and Parts of Depositions. (a)

[Title of Court and Cause.]

Come now the defendants above-named, by Jones, Voorhees & Stephens, their attorneys, and file this, their motion for an order suppressing the depositions of Edward Burns and Dumont Clarke, witnesses for the plaintiff, and each of them, heretofore taken in the city of ————, State of ————, and returned into this court, for the reasons:

1. That the notice given of the taking of such depositions was not reasonable in point of time.

2. That the certificate of the notary public before whom such dispositions were taken is irregular, defective, and insufficient, in that it fails to certify that

such notary public was not at the time of taking such depositions of counsel or attorney to either of the parties, nor interested in the event of the cause.

The said defendants also move the Court for an order suppressing those portions of said depositions following, that is to say:

The following question and answer occurring in the deposition of Edward Burns:

(Set out questions and answers.)

The defendants also move the Court for an order suppressing the exhibits marked "A," "B," "C," "D," "E," "F," and "G," attached to the deposition of Edward Burns, for the reason that the notary public before whom such deposition was taken wholly fails to certify that said several exhibits were offered in evidence and marked as specially noted in the said depositions.

JONES, VOORHEES & STEPHENS.
Attorneys for Defendants.

(a) Desty's Fed. Proc., sec. 383.

No. 582.

Order on Motion to Suppress.

The above-entitled matter coming on to be heard, upon the amended motion of defendants to suppress the depositions of Edward Burns and Dumont Clarke, on file in this court, and to suppress certain portions thereof, and the Court having heard the arguments of counsel and being fully advised in the premises.

It is hereby ordered that the following questions and answers occurring in the said deposition of Edward Burns be, and the same are hereby, suppressed, that is to say: (set out questions and answers.)

To which ruling of the Court the plaintiff excepts and the exception is allowed.

It is also ordered that the said motion, save and except those portions thereof moving the suppression of the questions and answers herein specifically indicated as suppressed hereby, be, and the same is hereby denied, to which ruling of the Court the defendants except and the exception is allowed.

Done in open court this ——day of ———, 18—.

———,

Judge.

No. 583.

Order to Open and Publish Depositions. (a)

[Title of Court and Cause.]

Now, at this day, on motion of Mr. L. B. Cox, of counsel for the plaintiff, it is ordered that the clerk of this court be, and he is hereby, authorized and directed to open and publish all depositions heretofore filed in this cause.

(a) Desty's Fed. Proc., sec. 384.

No. 584.

Petition for Order to Re-examine Witnesses.

[Title of Court and Cause.]

To the Honorable Judges of the above-entitled court.

Comes now A, the plaintiff in the above-entitled action, and asks that an order may be allowed allowing him to re-examine upon deposition the following named witnesses heretofore examined on his behalf, to wit: J M, C G, C A, etc. In support of said ap-

plication plaintiff respectfully represents that said witnesses were heretofore examined upon notice given under and in pursuance of sections 863, 864, and 865 of the Revised Statutes of the United States, and the purpose of their examination was (state object).

And plaintiff further represents that, etc., and that in taking the examination of said witnesses the object had in view was (state object), but plaintiff finds from an examination of the depositions which have been duly taken and certified to this Court that in many instances the description given by the witnesses is not sufficiently definite, etc., etc.; and plaintiff desires to examine the witnesses above-named for the purpose of determining of their testimony, etc., etc.

_____,
Plaintiff's Attorneys.

No. 585.

Order for Re-examination.

[Title of Court and Cause.]

Now, at this day, comes the plaintiff herein, by Mr. L. B. Cox, of counsel, and the defendant, by Mr. Emmett B. Williams, of counsel, and thereupon, this cause comes on to be heard upon the motion of said plaintiff for an order allowing him to re-examine upon deposition certain witnesses heretofore examined in his behalf, and was argued by counsel; on consideration whereof, it is ordered, that said plaintiff be, and he is hereby, allowed and authorized to re-examine upon deposition, in his own behalf, the following named persons heretofore examined by him, to wit: J M, C G, C A, etc.

CHAPTER VI.

REMOVAL OF CAUSES.

Section I.

FEDERAL QUESTIONS.

No. 586.

Petition for Removal Where Cause Involves a Federal Question. (a)

In the District Court of, etc.

[Title of Cause.]

To the Honorable Alexander E. Mayhew, Judge of the Court aforesaid:

Your petitioners, Royal J. Rutter and F. W. Bradley, defendants in the above-entitled action, respectfully represent and show to your Honorable Court:

That this is a civil action brought in this Court in pursuance of an adverse claim, filed in the United States land office at Coeuer d' Alene City, State of Idaho, by the plaintiff herein, to the application of the petitioners for a United States patent to a certain parcel of mineral land, situated in Shoshone county, in said State. That said action is in pursuance of the provisions of section 2326 of the Revised Statutes of the United States, for the determination of controversies arising between claimants to the right of possession of mineral lands claimed for patent by the parties thereto.

Your petitioners allege that they are each citizens of the United States and residents and citizens of the

county of Shoshone, State of Idaho, and that the Shoshone Mining Company is a corporation doing business and claiming to be organized and existing under the laws of the State of Idaho.

That the value of the premises described in the complaint, exclusive of interest and costs, exceeds the sum of two thousand ($2,000) dollars.

That this action is a special action created and authorized by the statutes of the United States, to facilitate the sale and disposition of the public mineral lands by the land department, and involves the right of possession conferred by said statutes on claimants of the same who desire to obtain patents for the lands claimed by them, and is therefore within the jurisdiction of the courts of the United States.

That this action involves the questions of what is a lawful location of a mineral claim; what discovery of mineral is required to support such location, and what rights follow such location, discovery, and attempted appropriation, and the proper construction of the acts of Congress relating thereto.

That your petitioners are claimants of the title to the premises in controversy and the plaintiff is an adverse claimant thereto under the statute.

(Conclusion, Form No. 618.)

(Verification Forms Nos. 619, 620.)

(a) Desty's Fed. Proc., sec. 96.

No. 587.

Petition for Removal. Involving Federal Question.

(a)

In the Superior Court, etc.

[Title of Cause.]

Now at the time of filing his first appearance in

said entitled cause comes the said defendant C. D. Harvard and presents to this honorable Court his petition for removal of this suit to the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California, held at the city of San Francisco, and as grounds therefor respectfully shows:

First. That as shown by plaintiff's complaint on file herein, this suit arises under the laws of the United States providing for the disposition and sale of the public gold-bearing mineral lands.

Second. That each of the plaintiffs is and for more than five years last past has been a citizen of the State of California.

Third. That the defendant is and for more than five years last past has been a citizen of Minnesota.

Fourth. That the lands in controversy in this suit are of the value of $2,000.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Desty's Fed. Proc., sec. 96.

No. 588.

Petition for Removal by a National Bank Where Federal Question is Involved. (a)

In the Superior Court of, etc.

[Title of Cause.]

To the Honorable, the Superior Court of the city and county of San Francisco, State of California:

Your petitioner, the Crocker-Woolworth National Bank of San Francisco, represents and alleges:

That heretofore, and on the fourth day of Septem-

ber, 1897, the above-entitled action was begun in this court by the filing of a complaint with the clerk of said court.

That thereafter and on the same day a summons was issued in said case out of and under the seal of said Court, and service of said summons was, on said fourth day of September, 1897, made upon the defendant, your petitioner, at the city and county of San Francisco, State of California.

That under and by virtue of the laws of the State of California in this behalf enacted and the rule of this Court in which this suit is brought, the defendant therein, your petitioner, is required to answer or plead to the declaration or complaint of the plaintiff on Tuesday, the fourteenth day of September, 1897, and that the defendant, your petitioner, has not answered, plead or otherwise appeared in said suit.

And your petitioner further represents and alleges that the matter and amount in the above-entitled suit exceeds, exclusive of costs, the sum or value of two thousand dollars.

And your petitioner further represents and alleges that the above-entitled action is a suit of a civil nature at common law, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arises under the laws of the United States; and in that behalf the petitioner represents and alleges that it is a national banking association, organized and existing under and in pursuance of the acts of the Congress of the United States known as and entitled "The National Bank act," and having its principal place of deposit and discount at the city and county of San Francisco, State of California. That the above-entitled action is brought for the purpose of recovering from your petitioner the sum of $7,754.64, alleged

in the complaint in this cause to be due and owing from petitioner for and on account of taxes levied and assessed for the year ending June 30, 1897, for State and city and county purposes, against your petitioner, upon certain personal property had and owned by it at noon on the first Monday in March, 1896, and described and valued in said complaint as follows: Fixtures, valued at $4,500; money on hand, $456,750.

That in and by the complaint in said action it is alleged and shown that the defendant was willing and offered to pay taxes upon said fixtures, but was not allowed to make such payment.

And your petitioner now represents and alleges that the determination of its liability to pay the taxes alleged in the complaint to have been levied and assessed against defendant, because of its holding of said sum of money on hand, to wit, $456,750, depends upon the construction of the act of Congress of the United States; that the defendant, your petitioner, will and does claim that under and in pursuance of the provisions of sections 5214 and 5219 of the Revised Statutes of the United States, it is not permissible to assess or levy against it any taxes because of its ownership of money on hand, and that because of the restrictions contained in such laws of the Congress of the United States the said levy and assessment are and each is wholly void.

And your petitioner represents that the plaintiff in such case will and does claim that such levy and assessment are in derogation of said acts of the Congress of the United States; and your petitioner represents that the only question involved in this action arises out of and depends upon the construction to be given the aforesaid sections of the Revised Laws of the United States, and the decision of this

case and of the issues arising herein between the plaintiff and defendant, depend upon the construction of the aforesaid laws of the United States reulating the formation of national banking associations, and particularly the section of the Revised Statutes of the United States hereinabove mentioned referring and determining the right to tax the real and personal property of such associations; and this suit arises wholly out of a controversy between the parties in regard to the operation and effect of the laws aforesaid upon the facts involved.

(Conclusion and verification. Forms Nos. 618, 619, 620.)

LLOYD & WOOD,

Attorneys for petitioner, The Crocker-Woolworth Nat. Bank of San Francisco.

By G. W. KLEIN.

Cashier.

(a) Desty's Fed. Proc., sec. 96.

No. 589.

Petition for Removal Involving Federal Question. (a)

In the Superior Court of, etc.

[Title of Cause.]

Your petitioners respectfully show that they are the defendants in this action, which is of a civil nature, in equity, and that the matter or amount in dispute exceeds the sum of two thousand dollars, exclusive of interest and costs.

That said action is in equity, of a civil nature, and arises under the constitution and laws of the United States.

That the defendants, at and about the time of the commencement of the above-entitled action, were in

the possession and occupancy of the mining ground known as the St. Lawrence Mine, near Moore's Flat, in Nevada county, State of California, and were engaged in working said property by the hydraulic process under a license or permit duly and regularly made and issued to the defendant Ah Wing as the owner of the property by the commissioners appointed and acting under and in pursuance of an act of the Congress of the United States, approved March 3, 1893, entitled "An act to create the California Debris Commission, and to regulate hydraulic mining in the State of California."

That said mining was carried on by said defendants in conformity to the license or permit aforesaid, and the rules, regulations, and requirements of said commission, and the provisions of said act of Congress.

That said action is brought to restrain and enjoin the defendants and each and all of them from working said mine by the hydraulic process; that the question of the force and effect of the said act of Congress and of the power and authority of said debris commission under said act of Congress, and of the legal effect of the license or permit granted by said commission to the defendant Ah Wing, and other acts performed by said commission relating to the subject matter of this action are involved in said action; that said defense rests mainly upon said act of Congress and upon the power and authority of the said commission thereunder, as will more fully appear from the complaint on file, and from the answer of the defendants thereto, filed herewith, to which reference is hereby made.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Desty's Fed. Proc., sec. 9C

Section II.

DIVERSE CITIZENSHIP.

No. 590.

Petition for Removal — Citizens of Different States. (a)

(Non-resident Plaintiff v. Non-resident Defendant.)
In the Superior Court of, etc.

[Title of Cause.]

To the honorable judges of the above-entitled Court:

Comes now your petitioner, Henry H. Shufeldt, the above-named defendant, by his attorneys, Hastings & Stedman, and respectfully represents to this honorable Court:

1. That on the twenty-eighth day of November, 1896, the above-named plaintiff filed a complaint in the Superior Court of King county, State of Washington, praying for a judgment against the defendant upon a promissory note for the sum of twenty-five hundred ($2,500.00) dollars with interest at ten per cent per annum from April 9, 1896, with costs, and attorneys' fees of five per cent of the amount due.

2. That on said date, and immediately after filing said complaint the said plaintiff caused to be sued out a writ of attachment, and caused said writ of attachment to be delivered to the sheriff, who thereupon levied upon property of your petitioner in King county, Washington.

3. Your petitioner further avers that the time has not elapsed wherein your petitioner is allowed under the practice and laws of the State of Washington and the rules of said Court to appear, plead, demur, or answer said complaint.

4. Your petitioner further avers that at the time of the commencement of said suit, and ever since then, and at the present time the plaintiff in said action, the Harrisburg Trust Company, was and is a corporation organized and existing under and by virtue of the laws of the commonwealth of Pennsylvania, and was a citizen and resident of the State of Pennsylvania, having its principal place of business at the city of Harrisburg in said State, and the defendant, at the time of the commencement of said suit was, and ever since has been, and still is, a citizen of the State of Wisconsin and a resident thereof, residing at the city of Oconomowoc in said State of Wisconsin.

5. Your petitioner further avers that this is a controversy between citizens of different States and more than two thousand ($2,000.00) dollars, exclusive of interest and costs, is involved therein.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Desty's Fed. Proc., secs. 97, 98.

No. 591.

Petition for Removal — Citizens of Different States. (a)

(Resident Plaintiff v. Non-resident Defendant.)

In the Superior Court of, etc.

[Title of Cause.]

To the Honorable Superior Court of Humboldt County, State of California.

The petition of Henry T. Noyes and John S. Noyes, defendants in the above-entitled action, respectfully show to this honorable Court.

That your petitioners are defendants in the above-entitled action.

That said action has been commenced against them in said Court by said plaintiff, and that said action is of a civil nature.

That said plaintiff, in his complaint herein, claims in substance that on the fifth day of June, 1882, your petitioner entered into a contract in writing with plaintiff for the purchase and acquisition of certain timber lands situate in said county and State, and that in such purchase and acquisition said plaintiff rendered certain services for defendants upon an agreed price, amounting to the sum of $5,479.46, for which he demands judgment against said defendants.

That your petitioners dispute said claim and deny all liability under the contract set out in the complaint herein.

That the matter in dispute in this action exceeds the sum of two thousand dollars, exclusive of interest and costs.

That the controversy in this action and every issue of fact and law therein is wholly between citizens of different States, and which can be fully determined as between them—that is to say, the plaintiff, J. E. Barnard, is now, and was at the time of the filing of the complaint in this action, a citizen and resident of the State of California, and the defendants, Henry T. Noyes and John S. Noyes, were then and still are citizens and residents of the State of New York.

That the time for your petitioners, as defendants in this action, to answer or plead to the complaint in said action has not yet expired and will not so expire until the twenty-eighth day of August, 1891, and your petitioners have not yet filed or in any way appeared therein.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Desty's Fed. Proc., secs. 97, 98.

No. 592.

Petition for Removal. (a)

(Resident Plaintiff v. Non-resident Defendant and Resident Defendant who has Disclaimed All Interest in the Action.)

In the Superior Court of, etc.

[Title of Cause.]

The petition of William Sharon, one of the above-named defendants, shows to the Court as follows:

That the above suit was begun against your petitioner, William Sharon and Alexander D. Sharon, in the Superior Court of the city and county of San Francisco, State of California, by the filing of a complaint and the service of a summons and copy of the complaint therein, on the —— day of ———, 18——. That the defendant, Alexander D. Sharon, filed his answer in said cause on the twenty-fourth day of November, 18——. That your petitioner has not yet filed his answer; but that, as to your petitioner, said cause is now pending on his motion to strike out portions of the complaint herein; that said cause has not been tried, and that this is the first term of said Superior Court at which the same could by any probability be tried.

That at the time said suit was begun, and at the present time, the plaintiff was and is a citizen and resident of the State of California, and the defendant William Sharon was and is a citizen and resident of

the State of Nevada; and that the said defendant Alexander D. Sharon was and is a citizen and resident of the State of California.

That the matters in dispute in said suit, and for which said suit is brought, exceeds the sum of two thousand dollars, exclusive of costs. That the defendant, Alexander D. Sharon has no interest in said action or the matters in dispute therein, or in any of the property therein mentioned, and has filed his answer disclaiming any interest of any name or nature in the same, or in the property described therein, and the same is wholly and solely the property of the defendant William Sharon.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Desty's Fed. Proc., secs. 97, 98.

No. 593.

Petition for Removal. (a)

(Citizens v. Aliens.)

In the Superior Court, etc.

[Title of Cause.]

The petition of James D. Walker, one of the abovenamed defendants, shows to the Court as follows:

That the above suit was begun against your petitioners, James D. Walker, Thomas Menzies, and Henry D. Harrison, in the Superior Court of the county of Marin, State of California, by the filing of a complaint, and the service of a summons and a copy of the complaint herein on the defendants.

That your petitioners have not yet filed their answer, but that, as to your petitioners, said cause is

now pending, that said cause has not been tried, and that this is the first term of said Superior Court at which the same could by any probability be tried.

That at the time said suit was begun, and at the present time, the plaintiffs are citizens and residents of the State of California, and the defendants are aliens and subjects of the United Kingdom of Great Britain and Ireland; the said defendant, James D. Walker, being a resident of the county of Marin, and the said Thomas Menzies and Henry D. Harrison residents of the county of Alameda, State of California.

That the matters in dispute in said suit, and for which said suit is brought, exceeds the sum of two thousand dollars, exclusive of costs.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Desty's Fed. Proc., secs. 97, 98.

No. 594.

Petition for Removal from State Court to Circuit Court. (a)

(Resident Plaintiff v. Alien Defendant.)

In the Superior Court of, etc.

[Title of Cause.]

To the Honorable, the Superior Court of the State of Washington, in and for the county of Jefferson, and to the Honorable MORRIS B. SACHS, Judge thereof:

The petition of Robert H. Craswell, the defendant in the above-entitled action, respectfully shows:

I.

That said action is a suit of a civil nature at common law, of which the Circuit Court of the United States has original jurisdiction, and has been brought and is now pending in this honorable Court, and has not yet been tried, nor has the time at or before which the defendant, this petitioner, is required, by laws of the State of Washington, or any rules or rule of this honorable Court, to answer or plead to the complaint of plaintiff elapsed, and the matter in dispute in said suit exceeds, exclusive of interest and costs, the sum and value of two thousand dollars, and said suit is a controversy between the plaintiff, who, at the time of the commencement of said suit, was and now is a citizen of the State of Washington, and this defendant, who is not a citizen of the State of Washington, but was, at the time of the commencement of said suit, and now is, a foreign citizen and subject; that is to say, a citizen of the British Empire and a subject of her Britannic Majesty, Queen Victoria, and that there are no other parties to said suit.

II.

That by reason of the premises this petitioner, said defendant, desires and is entitled to have said suit removed from said Superior Court of the State of Washington into the Circuit Court of the United States for the proper District at this time.

III.

That the Circuit Court of the United States for the Ninth Circuit, and in and for the Northern Division of the District of Washington, holding terms at the city of Seattle, is the Circuit Court of the United States for the proper District, being the Circuit Court of the United States held in the District where said suit is pending.

IV.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Craswell v. Belanger, 15 U. S. App. 104; Desty's Fed. Proc., secs. 97, 98.

Section III.

SEPARABLE CONTROVERSY.

No. 595.

Petition for Removal—Separable Controversy. (a)

In the Superior Court of, etc.

[Title of Cause.]

To the Honorable, the Superior Court of the city and county of San Francisco, State of California:

The petition of John D. McGilvray, one of the above-named defendants, shows as follows:

Your petitioner shows to this honorable Court that he is one of the defendants in this suit, which is of a civil nature, and that the matter or amount in dispute in this cause exceeds the sum or value of two thousand dollars, exclusive of interest and costs.

That the controversy herein is between citizens of a State and of a foreign State; that the plaintiff, Jane Knott, was at the time of the commencement of this suit, and still is, a citizen of the State of California, residing in the county of Sonoma, in said State, and that your petitioner, John D. McGilvray, was, at the time of the commencement of this suit, and for seventeen years last past has been, a resident of the city of Denver, in the State of Colorado, and that your petitioner desires to remove this suit before the trial

thereof into the next Circuit Court of the United States to be held in the Ninth Judicial Circuit for the Northern District of California.

Your petitioner further shows that the causes of action that the plaintiff herein has against the two defendants for damages for the death of Benjamin Knott are separable controversies.

That on the eleventh day of May, 1897, your petitioner was engaged as an independent contractor to do certain work in the construction of a building on the lot of land situate at the southwest corner of Market and Third streets; that in the prosecution of said work it became and was necessary to place a certain piece of timber in an upright position, so that one end of said timber was against the under part of said cornice, and the other end was on the roof of the building on the lot next adjoining on the west. That the defendant Spreckels is the owner of said last-mentioned lot. That it is claimed by the plaintiff that the aforesaid piece of timber fell from its place and struck the said Benjamin Knott, who was on the street beneath, and so injured him that he subsequently died.

That the cause of action that the plaintiff, Jane Knott has, if she has any, against your petitioner, is for his negligence, through his agents and servants, in improperly placing the said piece of timber. That the cause of action that plaintiff Jane Knott has, if she has any, against the defendant Claus Spreckels is for maintaining a nuisance upon his said premises. That therefore the said two causes of action are separable.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) See Hartshorn v. Atchison T. & S. F. Ry. Co., 77 Fed. Rep. 9, where a somewhat similar action was held separable; Desty's Fed. Proc., secs. 97, 98.

No. 596.

Petition for Removal—Separable Controversies After Dismissal of Suit Against Other Defendants. (a)

[Title of Court and Cause.]

To the honorable, the ——— Court of State of ———.

Your petitioner respectfully shows that it is one of the defendants in the above-entitled suit, and that the matter and amount in dispute in said suit exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

That there is in said suit a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, between your petitioner, the Chesapeake & Ohio Ry. Co., defendant in said suit, who avers that it was at the commencement of this suit, and still is, a corporation organized under the laws of the States of Virginia and West Virginia, and of no other State, and that it was then and still is a citizen and resident of the States of Virginia and West Virginia, and of no other State, and that it was not then, and is not now, a resident or citizen of the State of Kentucky—and the plaintiff, John T. Powers, who was, at the commencement of this suit, and still is, a resident and citizen of the State of Kentucky. Your petitioner further says that the said defendants, Wm. D. Boyer, David Evans and Edward Hickey are all and every of them, citizens and residents of the State of Kentucky, and that they are fraudulently and improperly joined as parties defendant for the sole purpose of defeating the right of petitioner to remove to the United States Circuit Court.

That because of said joinder of said W. D. Boyer, David Evans, and Edward Hickey, being citizens of

the same State as said plaintiff, said cause was remanded to the State Court.

Your petitioner says that the said suit as to said W. D. Boyer, David Evans and E. Hickey was, on the sixteenth day of October, 1894, dismissed, that the said cause is now, for the first time, pending as to the said C. & O. Ry. Co. alone.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Powers v. Chesapeake & Ohio Ry. Co., 65 Fed. Rep. 130; Desty's Fed. Proc., secs. 97, 98.

Section IV.

LOCAL PREJUDICE.

No. 597.

Petition for Removal. (a)

In the Circuit Court, etc.

[Title of Cause.]

Petition for removal from the Superior Court of the State of ————, in and for the county of ————.

To the honorable, the judges of the Circuit Court of the United States for the ———— District of ————:

Your petitioner, the above-named Z, respectfully shows to this honorable Court that A, as plaintiff, brought suit of a civil nature in the Superior Court of the State of ————, in and for the county of ————, against your petitioner Z, and that the matter or amount in dispute in said cause exceeds the sum or value of two thousand dollars, exclusive of interest and costs.

That the said controversy is between citizens of different States; that the plaintiff A was, at the time of the commencement of this suit and still is a citizen of the State of ————, residing at ———— in said State; and that your petitioner Z was, at the time of the commencement of this suit, and still is, a citizen of the State of ————, and of no other State, residing in the city of ———— in said State, and that your petitioner desires to remove this suit which is now pending and undetermined in said State Court, before the trial thereof, into the Circuit Court of the United States to be held in the ————, District of ————.

Your petitioner further shows unto this honorable Court that from prejudice and local influence in favor of the plaintiff and adverse to this defendant he will not be able to obtain justice in said Court or in any other State Court to which said defendant may, under the laws of the State, have a right to remove said cause, on account of such prejudice or local influence.

(Conclusion and verification, Forms Nos. 618, 619, 620.)

(a) Desty's Fed. Proc., secs. 99, 100.

No. 598.

Affidavit for Removal of Cause for Prejudice, etc. (a)

[Title of Court and Cause.]

United States of America, ————
———— District of ————. } ss.

I, Z, being duly sworn, do say that I am the defendant [or one of the defendants] in the above

entitled cause which is now pending for trial in the Superior Court of the State of ———— in and for the county of ————, and that from prejudice and local influence I shall not be able to obtain justice in said State Court or in any other State Court to which I may, under the laws of said State, have the right, on account of such prejudice or local influences, to remove said cause.

Subscribed and sworn to, etc.

(a) Desty's Fed. Proc., sec. 100.

No. 599.

Writ of Certiorari for Removal on Ground of Prejudice or Local Influence. (a)

The President of the United States of America to the Superior Court of the State of ————, in and for the County of ————, Greeting:

It being represented to us that there is now pending before you a certain cause No. ——, wherein A is plaintiff and Z is defendant, which cause was commenced in the Superior Court of the State of ————, in and for the county of ————, by A against the said Z, for the purpose of (state object of suit), and that on the —— day of ———, a summons was issued out of said Court and that no trial has yet been had; and, whereas, said defendant has caused to be filed, in our Circuit Court for the ———— District of ————, his petition for the removal of the said cause from the said Superior Court to the Circuit Court of the United States for the ———— District of ————, and a bond with good and sufficient surety, according to the statutes of the United States in such case made

and provided; and has made it appear to us that, from prejudice or local influence he will not be able to obtain justice in such State Court or any other State Court to which the defendant may, under the laws of the State, have the right to remove the said cause, we are willing to remove the said cause, and that the records and proceedings therein should be certified by said Superior Court and removed into our Circuit Court of the United States in and for the ———— District of ————, and do hereby command you to certify and send the records and proceedings aforesaid, with all things concerning the same, to the said Circuit Court of the United States, together with this writ, so that you may have the same at the United States courthouse in the city of ————, in the said District of ———, on the —— day of ——— in the said Circuit Court to be then and there held, that the said Circuit Court may cause to be done thereupon what of right, according to the laws of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court, and the seal of the said Circuit Court hereto affixed, the —— day of ———, 18——.

————,
Clerk of said Circuit Court.

(a) Desty's Fed. Proc., secs. 100-111.

Section V.

OTHER GROUNDS.

No. 600.

Petition for Removal from Territorial District Court after Territory Admitted as a State.

In the District Court of, etc.

[Title of Cause.]

The plaintiff respectfully shows unto the Court that the above-entitled cause was pending in this Court at the date when Montana was admitted into the Union and is a cause whereof the United States Circuit Court would have had jurisdiction had such Court existed at the commencement of said cause, and is one of the cases referred to in section 14 of the Schedule to the Constitution of said State.

Wherefore, plaintiff requests the Court to transfer said cause to the United States Circuit Court of the Ninth Circuit and District of Montana.

McCUTCHEON & McINTIRE,
Plaintiffs' Attorneys.

No. 601.

Order of Court Transferring Cause.

In the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow.—ss.

Pleas.—At a regular term of the District Court of the Second Judicial District of the State of Montana, sitting in and for the county of Silver Bow, held at the courthouse in Butte City, the county

seat of the said county of Silver Bow, on the sixteenth day of July, A. D. 1890.

Present: etc., etc.

This day the order heretofore made setting this cause for trial is vacated, and plaintiff's request for transfer of this cause to the United States Circuit Court is granted.

Whereupon, said cause is by the Court ordered transferred to the United States Circuit Court, Ninth District, Montana.

(Signed) JOHN J. McHATTON,
Judge.

No. 602.

Clerk's Certificate to Transferred Record.

The State of Montana, }
County of Silver Bow. } ss.

I, Will L. Clark, Clerk of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, do hereby certify that the foregoing is a full, true, and correct copy of order of Court transferring the cause of the Montana Central Railway Company versus A. F. Migeon et al., to the United States Circuit Court, Ninth District, Montana, made and entered upon the minutes of the said District Court, in Journal F, page 40, on the sixteenth day of July, A. D. 1890.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this twenty-second day of December, A. D. 1891.

[Seal] WILL L. CLARK,
Clerk.

Section VI.

ACTIONS AGAINST REVENUE OFFICERS

No. 603.

Petition for Removal by Certiorari. (a)

In the Circuit Court of, etc.

[Title of Cause.]

To the Honorable Judges of the Circuit Court of the United States, for the Northern District of California.

The petition of Olin M. Welburn, Barry Baldwin and B. M. Thomas, the defendants above-named, respectfully showeth:

That before the commencement of the suit above-named, and at all the times hereinafter mentioned, the said Olin M. Welburn and B. M. Thomas were and now are the duly appointed and qualified collector of internal revenue of the United States and deputy internal revenue agent of the United States, respectively, for the first revenue district of California, and the said Barry Baldwin was at such times and is the United States marshal for the Northern District of California, all of your petitioners acting under and by the authority of the internal revenue laws of the United States.

That heretofore, and on the seventh day of January, 1894, one Barnett Rosenthal was the occupant and lessee of the premises, No. 624 Market street, and the owner and in control of certain personal property therein contained, to wit: certain machinery, tools, implements, apparatus, fixtures, boxes, barrels, tobacco and cigars, shelving and counters, and other articles and things.

That said Barnett Rosenthal, on or about said day, and continuously theretofore and thereafter, and

while in the occupancy of said premises and in the ownership and control of said personal property as aforesaid, having bonded the same as a cigar and tobacco manufactory, then and there committed certain violations against the said internal revenue laws of the United States in the use and management of said property, to wit, the said Barnett Rosenthal did then and there and upon said premises wrongfully, unlawfully, and knowingly, and contrary to the provisions of sections 3372, 3374, 3397, and 3400 of the Revised Statutes of the United States, remove from said manufactory, without the proper stamps denoting the tax therein, tobacco made therein, made false and fraudulent entries of manufactures and sales of tobacco (etc.; other charges specified), and, committed other offenses against said revenue laws of the United States.

That thereafter a suit for divorce was instituted in the Superior Court of the city and county of San Francisco within the State and district aforesaid by Mrs. Fannie Rosenthal against the said Barnett Rosenthal, her husband, and such proceedings were thereupon had that a decree of said Superior Court was made and entered granting the divorce and awarding said personal property to said Mrs. Fannie Rosenthal, subject to the payment of certain claims alleged to have been established in said Court against her, and on the third day of January, 1895, a receiver, Edward Riley, was appointed by said Court for said property.

That said receiver thereupon duly qualified and acted as such.

That thereafter the said receiver and Mrs. Fannie Rosenthal, the latter having, since the appointment and with the consent of said receiver, bonded the said premises as a cigar and tobacco manufac-

tory, committed certain violations against the said internal revenue laws of the United States, to wit: did then and there and upon the said premises (repeats the charges as above), and committed other offenses against said revenue laws of the United States.

That heretofore, and on the eleventh day of April, 1895, your petitioners, Olin M. Welburn as such collector, and B. M. Thomas as such internal revenue agent, seized said personal property for the violations aforesaid of said laws, and thereafter, on the twenty-seventh day of April, 1895, said collector delivered the same into the custody of your petitioner Barry Baldwin, as such United States marshal, who now holds the same by virtue of such delivery.

That said receiver has not yet been discharged by said Superior Court.

That heretofore, and on the twenty-ninth day of April, 1895, the suit above entitled was commenced in said Superior Court by said receiver, Edward Riley against your petitioners for $20,000 damages for an alleged wrongful conversion of said property by reason of the seizure and acts hereinbefore mentioned.

That at all of such times your petitioners were acting under color of their said respective officers and by authority of the internal revenue laws aforesaid.

That your petitioners have been served with process in said suit, to wit: with summons and complaint inaugurating the same and said process has been served as aforesaid within this said Northern District of California, and that there has not been as yet any trial or final hearing of said suit.

Your petitioners therefore pray that, in pursuance of the statute of said United States in such case made and provided, the said suit, so commenced in

said Superior Court of the city and county aforesaid against your petitioners, may be removed therefrom into this honorable Court for trial and determination, and thereupon proceed as a cause originally commenced in the same; and that a writ of certiorari in this behalf, for the record and proceedings heretofore had in said cause in said Superior Court, may issue from this honorable Court to the said Superior Court of said city and county as by the same statute is provided.

O. M. WELBURN,
BARRY BALDWIN,
B. M. THOMAS.

State and Northern District of California ————. } ss.

Olin M. Welburn, Barry Baldwin and B. M. Thomas, the above-named petitioners, make oath and say that the matters set forth in the foregoing petition are true in substance and in fact, the said Barry Baldwin making oath upon information and belief.

————,
(Signatures.)

Subscribed and sworn to, etc.

Certificate.

I, Samuel Knight, an attorney and counselor at law of the Supreme Court of said State, and assistant United States attorney for the Northern District of California, do hereby certify that as counsel for the petitioners above-named I have examined the proceedings against them in the foregoing petition mentioned, and have carefully inquired into all the mat-

ters set forth in said petition, and that I believe the same to be true.

SAMUEL KNIGHT,
Assistant United States Attorney.

(a) Desty's Fed. Proc., sec. 106; Rev. Stats. U. S., sec. 643.

No. 604.

Order for Writ of Certiorari.

In re the Petition of O. M. WELBURN et al., for Writ of Certiorari in RILEY v. WELBURN et al.

Upon motion of Samuel Knight, Esq., assistant United States attorney, and on filing petition of O. M. Welburn, Barry Baldwin and B. M. Thomas—ordered, that a writ of certiorari issue herein to the Superior Court of the city and county of San Francisco, requiring said Court to transmit the record and proceedings in said cause of Edward Riley vs. O. M. Welburn et al., to this Court within ten days.

Further ordered, that said writ be served by delivering to said Superior Court and to the clerk thereof each a certified copy and that C. J. Murphy be and he hereby is appointed an elisor to serve said writ of certiorari, Barry Baldwin, the marshal of this district, being a party to this proceeding.

(a) Rev. Stats. U. S., sec. 643; Desty's Fed. Proc., sec. 106.

No. 605.

Writ of Certiorari. (a)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

Northern District of California. }
United States of America, } ss.

To the Superior Court in and for the City and County of San Francisco, State of California, Greeting:

Being informed that there is now pending before you a suit wherein Edward Riley is plaintiff, and Olin M. Welburn, Barry Baldwin and B. M. Thomas are defendants, which said suit is brought for damages alleged to have been suffered by said plaintiff by reason of an alleged wrongful conversion of certain property by said defendants, the said alleged wrongful conversion occurring while said defendants were in discharge of their duties as officers of the United States, under the revenue laws of the United States, and which said suit has been commenced by the service of process, to wit, summons and complaint upon said Olin M. Welburn, Barry Baldwin and B. M. Thomas and said suit has not yet been heard and determined.

Therefore, we being willing for certain reasons that said case and the records and proceedings heretofore had therein should be certified by said Superior Court and removed into our Circuit Court of the United States in and for the Ninth Judicial Circuit and Northern District of California do hereby command you that you send, without delay and within ten days, to the said Circuit Court as aforesaid, the records and proceedings in said case, so that the said Circuit Court may act thereon as of right and according to law ought to be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this sixth day of May, A. D. 1895.

W. J. COSTIGAN,
Clerk of the United States Circuit Court, in and for the Ninth Judicial Circuit, Northern District of California.

[Seal]

(a) Rev. Stats. U. S., sec. 643; Desty's Fed. Proc., sec. 106.

Section VII.
BONDS.

No. 606.

Bond on Removal. (a)

[Title of Court and Cause.]

Know all men by these presents, that we, XY and Z, as principals, and M and N, as sureties, residents, and ——— of the county of ————, State of ————, are held and firmly bound unto AB, plaintiff in the above-entitled cause, his successors and assigns, in the sum of five hundred ($500) dollars, lawful money of the United States of America, for the payment of which well and truly to be made, we and each of us bind ourselves, and each of us, our heirs, executors, and administrators, jointly and severally, by these presents.

The conditions of this obligation are such that:

Whereas, the said XY and Z have applied by petition to the (Superior) Court of the State of ——— ——, in and for the county of ————, for the removal of a certain cause therein pending wherein

AB is plaintiff and the said XY and Z are defendants, to the Circuit Court of the United States for the District of ————, ———— Division, for further proceedings on grounds in the said petition set forth, and that all further proceedings in said action in said ———— Court be stayed.

Now, therefore, if your petitioners, the said XY and Z shall enter in said Circuit Court of the United State for the District of ————, aforesaid, on or before the first day of the next regular session, a copy of the records in said suit, and shall pay or cause to be paid all costs that may be awarded therein by said Circuit Court of the United States if said Court shall hold that said suit was wrongfully or improperly removed thereto, [Note.—If special bail was originally requisite in said cause add here: "And shall then and there appear and enter special bail in said suit"], then this obligation shall be void; otherwise shall remain in full force and effect.

————.

Signed, subscribed and sworn, etc.

(a) Desty's Fed. Proc., sec. 109.

No. 607.

Sureties' Justification. (a)

State of ————, }
County of ————. } ss.

M and N, the sureties named in the foregoing bond, being first duly sworn, each for himself, deposes and says as follows: I am the same person whose name is subscribed to the foregoing bond, and I state I am a householder and resident of the county and State aforesaid, and that I am worth the sum of

five hundred ($500) dollars named therein as the penalty thereof, over and above all my just debts and liabilities, exclusive of property which is exempt from execution.

M.
N.

Subscribed and sworn, etc.

(a) Desty's Fed. Proc., sec. 109.

Section VIII.

MISCELLANEOUS.

No. 608.

Notice of Motion for Order of Removal. (a)

[Title of Court and Cause.]

To Messrs. P and Q, Attorneys for Plaintiff:

Please take notice that the defendants will on ———, the —— day of ———, 18——, at 10 o'clock, A. M., or as soon thereafter as counsel can be heard, move the Court for an order removing said cause to the Circuit Court of the United States for the ———— District of ————, Ninth Circuit, in accordance with the petition of defendants, a copy of which is hereto attached.

Dated the —— day of ———, 18——.

————,
Attorney for defendants.

(a) Desty's Fed. Proc., sec. 108; Carson & R. Lumber Co. v. Holtzclaw, 39 Fed. Rep. 578.

No. 609.

Order of Removal. (a)

[Title of Court and Cause.]

This cause coming on for hearing upon application of the defendant herein for an order transferring this cause to the United States Circuit Court for the ———— Circuit, District of ————, ———— Division, and it appearing to the Court that the defendant has filed his petition for such removal in due form of law, and that the defendant has filed his bond duly conditioned, with good and sufficient sureties, as provided by law, and it appearing to the Court that this is a proper cause for removal to said Circuit Court.

Now, therefore, it is hereby ordered and adjudged that this cause be and it hereby is removed to the United States Circuit Court for the ———— Circuit, District of ————, ———— Division, and the clerk is hereby directed to make up the record in said cause for transmission to said Court forthwith.

Done in open Court, this —— day of ————, 18——.

————,
Judge.

(a) Desty's Fed. Proc., sec. 110.

No. 610.

Clerk's Certificate with Record. (a)

[Title of Court and Cause.]

State of ————, }
County of ————. } ss.

I, F, county clerk of said county of ————, and ex-officio clerk of the Superior Court in and for

said county, hereby certify the above and foregoing to be a full, true, and correct copy of the record, and the whole thereof, in the above-entitled suit heretofore pending in said Superior Court, being the suit numbered No. 1408, wherein AB is plaintiff and XY are defendants, said record consisting of the complaint, filed by said plaintiff in said suit on the —— day of ———, 18—; the summons and return thereon, filed in said suit on the —— day of August, 18—— (b); the petition for removal of said suit to the United States Circuit Court, filed by said defendant in said suit on the —— day of ———, 18—, the bond on removal of said suit to the United States Circuit Court, filed by said defendant with said petition on the —— day of September, 18——, and the order of removal of said suit to said United States Circuit Court, entered of record in said suit on the ——day of ———, 18——, all as appears on the files and of record in my office.

In testimony, etc.

———————.
Clerk.

[Seal]

(a) Desty's Fed. Proc., sec. 111.

(b) Here add any other proceedings that may have been filed.

No. 611.

Notice of Removal.

In the Circuit Court of, etc.

[Title of Cause.]

You and each of you will please take notice that on the —— day of May, 18——, the above-entitled

cause was duly transferred from the ——— Court of the ——— county of ————, State of ———, to the Circuit Court of the United States, ——— Circuit, in and for the ——— District of ————, and that the record in said cause has this day been duly filed in the said United States Circuit Court.

Dated ———, 18—.

P & Q,
Attorneys for Defendant.

To the above-named plaintiff and to Messrs. ———— and ————, Attorneys for Plaintiff.

No. 612.

Praecipe for Appearance.

In the Circuit Court for, etc.

[Title of Cause.]

To the Clerk of the above-entitled Court:

You will please enter our appearance as attorneys for defendants in the above-entitled cause.

P. & Q.

No. 613.

Plea in Abatement to Petition for Removal. (a)

In the Circuit Court for, etc.

[Title of Cause.]

Now, comes Edward T., purser, the plaintiff in the above-entitled suit, and prays judgment of said defendant's petition for the removal of said suit from the Superior Court of the State of California, in and for the county of Lassen, to this Circuit Court, that

the same abate, because at the time and before the commencement of said suit in the said Superior Court he, the said plaintiff, was a citizen and subject of the United Kingdom of Great Britain, and that he never was a citizen of the United States or of the State of California, or of any State or territory within the United States; that the defendant, the said Mary M. Wyatt, at the time of the commencement of said suit and ever since has been and is now a citizen of the State of Wisconsin, as appears from said defendant's said petition for removal of said suit to this Court.

Wherefore, the plaintiff prays that the said suit be remanded to the said Superior Court.

T. Z. BLAKEMAN,
Attorney for plaintiff.

(a) Desty's Fed. Proc., sec. 108.

No. 614.

Demurrer and Answer to Plea in Abatement. (a)

[Title of Court and Cause.]

Now, comes the defendant, Mary M. Wyatt, and demurs to the plea in abatement heretofore filed by the plaintiff in the above-entitled cause on the following ground to wit:

That said plea does not state facts sufficient to constitute a plea in abatement in said cause or to entitle the plaintiff to the relief demanded.

And saving and reserving defendant's right to be heard upon the foregoing demurrer and to all exceptions thereunder, and to any decision which may be rendered thereunder, this defendant answering to

said plea avers that as to whether or not the said plaintiff was or is a citizen or subject of the United Kingdom of Great Britain, this defendant has no knowledge or information to enable her to answer thereto, and for that reason and upon that ground this defendant denies the said allegation, and avers that the said plaintiff is and was at the time of the commencement of this action a citizen of the United States and of the State of California.

And further answering thereto this defendant, upon and according to her information and belief, avers that the said plaintiff was at the time of the commencement of this action and ever since has been, and still is, a resident of the State of California and of the county of Lassen, in said State.

Wherefore, defendant prays that the said plaintiff take nothing bp his said plea in abatement, and that the relief demanded by him thereunder be denied.

FOX, KELLOG & GRAY,
Attorneys for said defendant.

[Verification.]

(a) Desty's Fed. Proc., sec. 108.

No. 615.

Motion to Remand on the Ground of No Jurisdiction.

[Title of Court and Cause.]

Now comes the plaintiff and moves this Court to remand the above-entitled cause to the Superior Court in and for the county of ————, in the State of ————, on the ground that this Court is without jurisdiction to hear and determine the cause.

————,
Attorneys for plaintiff.

(a) Desty's Fed. Proc., sec. 113.

No. 616.

Order Remanding Cause. (a)

At a Stated Term, etc.

Present, The Honorable, etc.

[Title of Cause.]

Plaintiff's motion to remand heretofore heard and submitted to the Court for consideration and decision having been fully considered, and the opinion of the Court having been delivered, it is in accordance with said opinion,

Ordered that said motion be, and the same is, granted, and that this cause be, and the same is hereby, remanded to the Superior Court of the county of Amador, State of California, for further proceedings.

(a) Desty's Fed. Proc., sec. 113.

No. 617.

Writ of Certiorari Under Section 7 of Act of March 3, 1875. (a)

The President of the United States of America to the Judge of the [describe the Court], Greeting:

Whereas, it has been represented to the Circuit Court of the United States for the District of ————, that a certain suit was commenced in the [state Court], wherein A, a citizen and resident of the State of ———— was plaintiff, and Z, a citizen of the State of ———— was defendant, and that the said Z duly filed in the said State Court his petition for the removal of said cause into the said Circuit Court of the United States, and filed

with said petition the bond with surety required by the act of Congress of March 3, 1875, entitled "An act to determine the jurisdiction of the Circuit Courts of the United States, and to regulate the removal of causes from State Courts and for other purposes," and by the act of Congress of March 3, 1887, amendatory of said last-named act, and that the clerk of said State Court has refused to said petitioner for the removal of said cause a copy of the record therein, though his legal fees therefor were tendered by said petitioner.

You, therefore, are hereby commanded that you forthwith certify or cause to be certified to the said Circuit Court of the United States for the ————, District of ————, a full, true, and complete copy of the record and proceedings in said cause in which the said petition for removal was filed as aforesaid, plainly and distinctly, and in as full and ample a manner as the same now remain before you, together with this writ; so that the said circuit Court may be able to proceed thereon and do what shall appear to them of right ought to be done. Herein fail not.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court, and the seal of the said Circuit Court hereto affixed, the —— day of ———, 18—.

————,
Clerk of the said Circuit Court.

(a) Desty's Fed. Proc., sec. 111.

No. 618.

General Form of Conclusion to Petition.

Your petitioners herewith present a good and suffi-

cient bond as provided by the statute in such cases, that they will, on or before the first day of the next ensuing session of the United States Circuit Court, for the Northern Division of the District of Idaho, file therein a transcript of the record of this action, and for the payment of all costs which may be awarded by the said Court, if the said Circuit Court shall hold that this suit was wrongfully or improperly removed thereto.

Your petitioners therefore pray that this Court proceed no further herein, except to make the order of removal as required by law and to accept the bond presented herewith, and direct a transcript of the record herein to be made for said Court as provided by law, and as in duty bound your petitioners will ever pray.

ROYAL J. RUTTER.
F. W. BRADLEY.

No. 619.

Verification of Petition by Petitioner.

State of ————, }
County of ————. } ss.

VW and XY, being each duly sworn according to law, severally depose and say:

I am one of the petitioners in the above-written petition and have read said petition, and the same is true of my own knowledge, except such matters as are therein stated on information and belief, and as to such statements I believe it to be true.

Subscribed and sworn to, etc.

No. 620.

Verification by Attorney.

State of ————, }
County of ————. } ss.

VP, being first duly sworn, on oath says that he is one of the attorneys of the defendant in the above-entitled cause and of the petitioner named in the foregoing petition; that he has read the same and believes the same to be true, and affiant further says that said petitioner is absent from and is a non-resident of the county of ————, State of ————, in which said suit is brought, and that affiant makes this affidavit for the reason that the defendant is absent from and is a non-resident of the said county of ————, in which said suit is brought.

VP.

Sworn, etc.

CHAPTER VII.

APPEALS.

Section I.

BILLS OF EXCEPTIONS, NOTICES, AND ORDERS.

No. 621.

Notice of Application for Extension of Time to Prepare Bill of Exceptions, and Demurrer to Evidence. (a)

[Title of Court and Cause.]

To ————, Attorneys for Plaintiff:

Take notice that the defendant will on ——, the —— day of ———, 18—, at the hour of ten o'clock A. M., at the courtroom of the United States Circuit Court, in the city of ————, move the Hon. ————, Judge, sitting and presiding in said Court, for an order extending the time of the defendant within which to prepare, file, and serve a bill of exceptions in the above-entitled cause, and to prepare its demurrer to the evidence, to the —— day of ———, 18—, including said day, and will at the same time move said Court for an order staying execution upon any judgment which may be entered in this cause until said —— day of ———, 18—.

————,

Attorney for defendant.

(a) Davis v. Patrick, 122 U. S. 138; Chateaugay Ore and Iron Co., 128 U. S. 544.

No. 622.

Order Extending Time to File Bill of Exceptions and Demurrer to the Evidence.

[Title of Court and Cause.]

And now, —— day ——, 18——, at —— o'clock M., upon due notice given by the defendant to the plaintiff's attorney upon oral motion of the defendant's attorney, and upon minutes and proceedings of this Court in this cause, it is by the Court ordered and considered that the time within which the defendant may prepare, file, and serve its bill of exceptions herein and its demurrer to the evidence be, and it is hereby, extended and enlarged to the —— day of ———, 18——, including that day.

————,
Judge.

No. 623.

Bill of Exceptions. (a)

[Title of Court and Cause.]

Be it remembered, that on the —— day of ———, 18—, the above-entitled cause came on for trial before the above Court and a jury duly impaneled.

Hon. C. B. Bellinger, presiding. The plaintiff appearing by Messrs. Cotton and Cox, its counsel, and the defendant appearing by E. B. Williams and Messrs. Thayer & St. Rayner, its counsel, and the following proceedings were had [set out proceedings].

The foregoing constitutes the testimony and statement of all the evidence introduced and offered upon the trial of this cause.

(a) Sup. Ct. R. 4; C. C. App. R. 10; Desty's Fed. Proc., sec. 477.

No. 624.

Bill of Exceptions (Action at Law). (a)

[Title of Court and Cause.]

This was an action at law to recover damages for, etc. [describe nature of cause].

The case came regularly on for trial on the —— day of ———, 18—, before ————, District Judge [or as the case may be], ————, Esq., and ————, Esq., appearing as counsel for the plaintiff, and Messrs. ———— appearing as counsel for the defendant.

A jury having been impaneled, the following proceedings were had and testimony taken:

An opening statement to the jury was made by Mr. ————.

The —— sued upon was here introduced in evidence, and marked "Plaintiff's Exhibit A," and was read to the jury. The following is a copy thereof, to wit, etc.

This concluded the testimony, and the foregoing constitutes all the testimony in the case. Both parties rested and the case was argued to the jury by counsel for the respective parties. After the argument, and before the Court charged the jury, counsel for the defendant moved the Court to instruct the jury to find a verdict for the defendant upon the following grounds [state them].

—— Exception.

To which said ruling of the Court counsel for the defendant then and there duly excepted, and hereby tender this, their bill of exceptions, to the Court to sign and seal, and the Court does hereby sign and seal the same.

The Court then proceeded to charge the jury.

—— Exception.

Prior to said charge and to the argument of counsel, the counsel for the defendant submitted to the Court and requested the Court to give to the jury the following instruction, etc.

To which said ruling of the Court, counsel for the defendant then and there duly excepted and hereby tender this, their bill of exceptions, to the Court to sign and seal, and the Court does hereby sign and seal the same.

—— Exception.

In the course of the charge to the jury, the Court instructed the jury as follows, etc.

To which said portion of said charge counsel for the defendant then and there duly excepted, and hereby tender this, their bill of exceptions, to the Court to sign and seal, and the Court does hereby sign and seal the same.

The jury then retired, and after a short absence returned into court with a verdict in favor of the plaintiff for damages in the sum of ——— on the —— day of ———, 18——.

And now, in furtherance of justice and that right may be done, the defendant presents the foregoing as his bill of exceptions in this case, and prays that the same may be settled and allowed, and signed and certified by the Judge as provided by law.

———,

Attorneys for Defendant.

(a) See notes to Form No. 623.

No. 625.

Bill of Exceptions No. 1. (a)

[Title of Court and Cause.]

Be it known that on this —— day of ———, 18—, the defendant's demurrer to the bill of complainants having by the Court been overruled, the defendant excepted to the order of the Court overruling said demurrer, and defendant's exceptions are duly allowed, and this bill of exceptions settled and allowed.

Done in open court this —— day of ———, 18—.

———,
Judge.

And be it further known that the amended bill of complaint presented to the Court to be filed on ———, 18—, was objected to by the defendant, for the reason that the Court did not have jurisdiction to receive said amended bill, for the reason that the same was not presented within the time required by law; and the further reason that the Court did not have jurisdiction of this cause for the reasons set forth in the demurrer of defendant to said amended bill of complaint, and the objections of defendant to the filing of said amended bill of complaint, and the demurrer of defendant to said amended bill of complaint were overruled, and defendant excepted to the ruling of the Court, which exception was allowed in open court, and the bill of exceptions was then and there presented and allowed by the Court.

Done in open court this —— day of ———, A. D. 18—.

———,
Judge.

(a) See notes to Form No. 623.

No. 626.

Bill of Exceptions, No. 2. (a)

[Title of Court and Cause.]

Be it remembered that on the trial of the above-entitled cause the defendant, to maintain its contention that the plaintiffs might not maintain their said action, offered in evidence a paper in words and figures as follows [here set out paper].

To the admission in evidence of which plaintiffs objected, which objection was sustained by the Court, to which the defendant excepted, which exception was then and there allowed.

Be it further known, that at the trial of this cause the plaintiff, ————, being on the witness stand, and sworn to testify as a witness, on cross-examination was asked by defendant's counsel [state the question asked, objection made, and what counsel offered to show by the testimony.]

The Court thereupon overruled the offer, and refused to allow the proofs offered to show etc., to which ruling the defendant then and there excepted, which exception was duly allowed.

III.

Be it further known, that when the plaintiff's witness, ————, was on the witness-stand, being duly sworn to testify as a witness in this case, he testified that, etc.

IV.

The defendant, the ———— Company, excepts to the decision of the Court wherein it holds as follows, etc.

And the defendant prays that this, its bill of exceptions, may be allowed, settled, and sealed.

————,

Counsel for Defendants.

Settled and allowed this —— day of ———, 18—.

————,

Judge.

(a) This bill and that in Form No. 625 were both made in same cause. Shoshone Mining Co. v. Rutter, 75 Fed. Rep. 37; 87 Fed. Rep. 801. As to this practice see Pomeroy's Lessee v. The State Bank of Indiana, 1 Wall. 592.

No. 627.

Objections to Defendant's Proposed Bill of Exceptions. (a)

[Title of Court and Cause.]

Comes now, the above-named plaintiff, A B, executrix, and objects to signing or allowing the defendant's proposed bill of exceptions as follows:

First.

Plaintiff objects to the Court's signing or allowing the first exceptions proposed by the defendant in its proposed bill of exceptions upon the following grounds:

1. That there was other competent, relevant, and material testimony given by the witness ———— upon the question then under examination.

2. That certain parts of the testimony of said witness ————, which were relevant, competent, and material to the question then under examination were suppressed and not set forth in the said excep-

tion, in this, that following the word "blank" in the the third line of said exception on the second page of said bill of exception the witness said " * * * ."

3. That said proposed exception is untrue in this, that in the tenth line of said exception the following language occurs, " * * * ."

Whereas, in truth and in fact, the witness did not so testify.

Second.

Plaintiff objects to the Court's signing or allowing the third exception in defendant's proposed bill of exceptions, on the ground that it does not contain all the evidence properly relating to the subject matter therein referred to.

Third.

Plaintiff objects to the Court signing or allowing the third exception set forth in defendant's proposed bill of exceptions upon the ground that said exception as proposed sets forth more than what in fact occurred at the time, in this, that counsel for the defendant in their said proposed exception said that they objected to the question propounded to the witness ————, upon the ground that it was incompetent, irrelevant, and immaterial and not proper rebuttal. Whereas in fact they objected to the said question upon the ground only that the same was incompetent and not proper rebuttal.

Fourth.

Plaintiff objects to the Court signing or allowing the fourth proposed exception set forth on page six of the bill of exceptions proposed by defendant wherein it says that, " * * * ," on the ground that said defendant did not except to said instructions in writing. Plaintiff further objects to the Court grant-

ing said exception five on the ground that said instruction mentioned in said exception was 1 to 27 instructions requested by defendant. That said defendant did not separately except to the refusal of the Court to give any single instruction requested, and did not point out to the Court the ground or reason for its exception to the refusal of the Court to give said or any one of said 27 requests to instruct, but simply took one general exception to the refusal of the Court to give its 27 requested instructions in the following language only: "Defendant excepts to the refusal of the Court to give the instructions requested numbered from 1 to 27 inclusive." That no other exception was taken by defendant to said requested instruction in said exception mentioned than that above quoted.

Fifth.

Plaintiff objects to the Court allowing and signing defendant's proposed exception number five on the same grounds and in the same language in which plaintiff objects to defendant's proposed exception number four.

Plaintiff moves this honorable Court to amend defendant's proposed bill of exceptions as follows, to wit:

First.

Plaintiff asks the Court to amend defendant's proposed exception number one by inserting after the word "blank" in the third line on the second page of said proposed bill of exceptions, the following words, to wit: * * * ; also to strike out from said exception the following words, * * *. Also asks that the following words be inserted: * * *

Thirty.

Plaintiff asks that defendant's proposed exception number thirty be amended as follows: * * * That the

foregoing be stricken out of said exception, and that there be inserted in lieu thereof the words and language plaintiff asks be inserted in exception twenty-eight.

Plaintiff asks that defendant's proposed bill of exceptions be amended as follows: That immediately following defendant's proposed exception number thirty-four, there be inserted and added to said proposed bill of exceptions the following, to wit: * * *

And now, in furtherance of justice, and that right may be done, the plaintiff presents the foregoing objections and amendments to defendant's proposed bill of exceptions, and pray that the said objections and said amendments may be allowed, and the same be inserted within defendant's proposed bill of exceptions.

————,
Attorney for Plaintiff.

(a) See Rules of Circuit Courts; Foster's Fed. Proc., sec. 378; Chateaugay Ore and Iron Co., Petitioner, 128 U. S. 544, 555; Pomeroy's Lessee v. State Bank of Indiana, 1 Wall. 592, 598; Mutual Life Ins. Co. v. Phinney's Executrix, 48 U. S. App. 78.

No. 628.

Notice of Dissent.

[Title of Court and Cause.]

To the plaintiff above-named, and to ————, Esquire, and ————, her attorneys.

Comes now the ———— Company of New York, the defendant above-named, and gives notice to the

plaintiff above-named, and to ————, Esquire, and ————, Esquire, her attorneys, that the said defendant dissents from the amendments, and each of them proposed by plaintiff to the said defendant's proposed bill of exceptions, served and filed herein, which said proposed amendments to said proposed bill of exceptions were served on said defendant on the —— day of ———, 18—. The said defendant further gives notice to said attorneys, and to said plaintiff, that on —, the —— day of ———, 18—, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard at the courtroom of said court in the city of ————, that the said defendant will present the proposed bill of exceptions and said proposed amendments to the judge of said court for settlement.

Dated this —— day of ———, 18—.

————,
————,
————,
Attorneys for Defendant.

No. 629.

Order that Proposed Bill of Exceptions be Amended.

[Title of Court and Cause.]

In the above-entitled action, tried at ——— term, 18—, of the above-entitled court, the jury having returned a verdict in favor of plaintiff, on the —— day of ———, 18—, for the sum of ——— dollars, and the Court having by consent of plaintiff, and at the request of the defendant, made an order extending the time of defendant to prepare, serve, and file its bill of exceptions herein until the —— day of ———,

18—, and before the expiration of said time, to wit, on the —— day of ———, 18—, the Court, by consent of plaintiff, and at the request of defendant, having further extended the time of said defendant to prepare, serve, and file its bill of exceptions herein, until the —— day of ———, 18—, and the said defendant having, on the —— day of ———, filed herein its proposed bill of exceptions and served a copy thereof upon the attorneys of plaintiff, and the Court having by consent of the defendant, and at the request of plaintiff, made an order extending the time of said plaintiff to prepare, serve, and file her objections and amendments to said proposed bill of exceptions until the —— day of ———, 18—, and said plaintiff having, on ——— 18—, served upon defendant, and filed herein her objections and amendments to said defendant's proposed bill of exceptions, and said defendant having on the —— day of ———, 18—, notified said plaintiff and her attorneys of its dissent to said proposed amendments, and to each of them, and that on the —— day of ———, 18—, at 10 o'clock A. M., or as soon thereafter as counsel could be heard, at the courtroom of said court, in the city of ————, it would present the proposed bill of exceptions and said amendments to the Judge of said court for settlement, and the defendants having, at the time and place aforesaid, presented said proposed bill of exceptions and said proposed amendments to said Judge for settlement, and the Court thereupon, upon motion of the plaintiff, having made an order continuing the settlement of said proposed bill of exceptions of defendant, and said proposed amendments of plaintiff, and said defendants dissent to said amendments until the —— day of ———, 18—, at ten o'clock A. M. and upon said —— day of ———, 18—, the said Court having made

and entered its order continuing said matter until the —— day of ———,18—, at the same hour; now, upon this —— day of ———, 18—, the said matter coming on regularly to be heard, the plaintiff appearing by her attorneys, ————, Esq., and ————, Esq., and the defendant appearing by its attorneys, ——— ———, and ————, and the same being heard, it is

Ordered by the Court that the said proposed bill of exceptions of defendant be amended as proposed by plaintiff, in the following particulars only, to wit [state them].

Now therefore, it appearing to the Court that the said proposed bill of exceptions has been amended as herein directed, let the same be settled, allowed, and certified.

Done in open Court at the —— term, 18—.

————,
Judge.

Dated ———, 18—.

The foregoing bill of exceptions is correct in all respects, and is hereby approved, allowed, and settled and made a part of the record herein.

Done in open Court at the —— term, 18—, and dated this —— day of ———, 18—.

————,
Judge.

———

No. 630.

Order Settling Bill of Exceptions.

[Title of Court and Cause.]

This cause having been brought on regularly before the Court on this ———, 18—, upon the application of the defendant for the settling and certifying of its proposed bill of exceptions lately filed herein, and the

time for such settling and certifying of said bill of exceptions having been duly extended by orders of the Court and by the stipulations of the parties until and including this day, and the parties having agreed together in respect to all the plaintiff's proposed amendments to said proposed bill of exceptions, and all of said amendments, so far as insisted on by the plaintiff, having been embodied in said proposed bill of exceptions as originally filed by amendment thereof on the files with the consent of the parties and the Court—

Now, therefore, on motion of Messrs. ————, the defendant's attorneys, it is ordered that said proposed bill of exceptions heretofore filed by the defendant in this cause as the same now stands amended as aforesaid be and it hereby is settled as the true bill of exceptions in this cause, and that the same, as so settled, be now and here certified accordingly by the undersigned, the Judge of this court, who presided at the trial of this cause, and that said bill of exceptions, when so certified, be filed by the clerk.

————.

No. 631.

Order Settling Bill of Exceptions.

[Title of Court and Cause.]

The proposed bill of exceptions in the above-entitled cause was served and filed on the twenty-first day of April, 1896, being within the time allowed by the order of this Court. The counsel for plaintiff applied to and procured from the counsel for defendant sundry written stipulations, giving plaintiff time within which to prepare, serve, and file amendments

to defendant's proposed bill of exceptions; the last of said written stipulations gave plaintiff to and including the tenth day of June, 1896, in which to prepare, serve, and file his proposed amendments to defendant's proposed bill of exceptions. On the tenth day of June, 1896, the plaintiff's proposed amendments to said proposed bill of exceptions were prepared and served; on the thirteenth day of June, 1893, the defendant served and filed his dissent to said proposed amendments, and gave notice to the plaintiff and his attorneys that on June 17, 1896, he, the said defendant, would present his proposed bill of exceptions and the amendments proposed thereto to the Judge who tried said cause, and have the same settled; that on said seventeenth day of June, 1896, defendant did present said proposed bill of exceptions and amendments to the said Judge for settlement; that thereupon the plaintiff's attorney, being present, objected to the settlement of said bill of exceptions upon the ground that the term of court at which the verdict in said cause was rendered and the judgment entered had expired, and no order of Court had been made continuing the matter over from the said term to any other term of court. Said objection was overruled and the above and foregoing bill of exceptions is hereby settled and allowed by me this —— day of ———, 18—.

———,

——— Judge.

No. 632.

Defendant's Bill of Exceptions and Demurrer to Evidence.

[Title of Court and Cause.]

Be it remembered that the above-entitled action came on regularly for trial upon the calendar of said

Court upon the —— day of ———, 18—, before the Hon. ————, District Judge, sitting in and holding the above-entitled Circuit Court, ————, Esq., and ————, Esq., appearing for the plaintiff, and ———— appearing as attorney for the defendant.

Thereupon a jury was duly impaneled and sworn to try the said cause, whereupon the following proceedings were had, to wit [evidence set out].

Testimony of witness closed, whereupon the defendant rests, and the plaintiff doth likewise, and the counsel for defendant enters a demurrer to the evidence in the cause (a): 1st. Because the evidence shows that the deceased met his death—received the injuries resulting in his death—while engaged in a violation of law, and while under the influence of such violation of law, to wit, gambling with dice for money, in violation of the laws of the State of Washington. Further because the evidence shows that the deceased, ————, met his death while allowing and permitting gambling for money to be carried on upon his premises in the city of ————, in the Hotel ———, for money, which was a violation of the Penal Code of the State of ————. Because the evidence shows that the deceased, ————, at the time he received the injuries resulting in his death, was under the influence of the violation of law described in the preceding paragraph.

Because the evidence shows that the deceased,——— ———, at the time when he signed his application for the insurance sued upon, had in full force and validity a policy for two thousand dollars in the ——— ———, and was therefore guilty of a breach of warranty, rendering the insurance sued upon under its terms absolutely void.

Upon the ground that the evidence shows that the plaintiff has failed to make out her case in any particular. Upon the ground that the evidence shows that at the time the deceased, ————, signed his application for the insurance sued upon in this cause, and before and after that time, he was engaged in tending bar within the meaning of the term "not tending bar" in the application made for insurance, and was therefore guilty of a breach of warranty.

Because the evidence shows that the plaintiff is not, in any view of the law and the facts proved by her, entitled to recover, and we therefore move the Court for a peremptory instruction in favor of the defendant.

Which demurrer is by the Court overruled and motion denied, and an exception noted for the defendant.

Here counsel for the defendant moves the Court to strike from the record in the cause and instruct the jury not to consider certain evidence, on the ground that the same is irrelevant, immaterial, and incompetent, and insufficient to change the force of the written application admitted to have been signed by the insured, which motion is by the Court denied, and an exception noted for the defendant.

Whereupon counsel for defendant, in addition to the reasons already urged in the demurrer to the evidence, further demurs: Because the evidence shows that the plaintiff submitted to the defendant proofs of loss upon the policy sued upon herein, which show affirmatively no claim against the defendant upon the policy sued upon, and that the plaintiff is thereby estopped from making any claim in this action: the defendant having rejected the claim relying upon the facts stated in the proof of loss, which additional grounds are considered by the Court as

a part of the original demurrer, and are by the Court overruled, and an exception allowed to the defendant.

The foregoing testimony and exhibits include all the evidence introduced by either party, relating to the making of the warranties set out in the answer of the defendant in respect to additional insurance and in respect to the insured being a bartender, and relating to the breach of said warranties by said——, and they include all the evidence introduced by either party as to any mistake, misunderstanding, and inaccuracy relating to said warranties, and also include all the evidence introduced by either party as to the cause of the shooting and the insured —— having been engaged in gambling at and immediately prior to the shooting; they include all the evidence given by both parties upon the trial, and include the opening statement of counsel for plaintiff in full as to the facts upon which the questions of law in the case hinge. Case closed, except argument.

The defendant thereupon, before the jury retired and before argument of the cause, in writing requested the Court to instruct the jury among other things, as follows [here follows the instruction].

Which instruction the Court refused to give, and thereupon, while the jury was still at the bar, the defendant, by its counsel, excepted in writing to the refusal of the Court to give the aforesaid second instruction, and said exception was by the Court allowed.

Counsel then proceeded with their argument, and the Court having announced that he would submit the cause to the jury, the defendant, not waiving its prayer for instructions and its exceptions to the refusal thereof, but excepting to the action of the Court, requested the Court to submit to the jury the following special issues or interrogatories, and to direct the

jury to find specifically thereof [here follow the special issues].

And thereupon, among other things, the Court instructed the jury as follows [follow the instructions by the Court].

To which comments, remarks, and modifications of the instructions given the defendant excepted in writing before the jury retired, and its exception was by the Court allowed.

The defendant, among other things, prayed the Court to give to the jury the following instruction [set it out].

And the Court in giving said instruction modified it so as to read as follows, etc.

To which modifications of said instructions defendant excepted in writing before the jury retired, and its exception was by the Court allowed.

And the Court instead of submitting the interrogatories for special findings to the jury, as requested by the defendant, submitted to the jury the following, etc.

To which refusal to submit the special findings or interrogatories proposed by defendant the defendant's counsel excepted in writing before the jury retired, which exception was allowed.

The jury then retired in charge of a bailiff. After a short absence the jury returned a verdict for the plaintiff, and assessed her damages at the sum of ——— dollars.

(a) As to effect of demurrer to evidence, see Pickel v. Isgrigg, 10 Biss. 220; 5 Am. & Eng. Ency. of Law, 563, title "Demurrer." This Form and Forms Nos. 633, 634, and 635, taken from the proceedings in Standard Life Ins. Co. v. Fraser, 76 Fed. Rep. 705; 44 U. S. App. 694.

No. 633.

Order Allowing Amendments and Settling Bill of Exceptions. (a)

[Title of Court and Cause.]

The cause having come on regularly to be heard upon the bill of exceptions as proposed by the defendant, and amendments thereto proposed by the plaintiff, and the plaintiff appearing by ————, and the defendant by ————, it is by the Court ordered that the first, eleventh, fourteenth, and sixteenth amendments proposed by the plaintiff be allowed by mutual consent, and that all other amendments proposed by the plaintiff and dissented from and objected to by the defendant be, and the same are, hereby disallowed and rejected; and it is by the Court ordered and considered that a copy of the en- the charge of the Court to the jury (a) be annexed to the bill of exceptions and known as "Schedule A," and that with the addition of said schedule the bill of exceptions, as corrected and amended by interlineation, be settled and allowed and made a part of the record herein.

Dated ——— 18—.

————,
Judge.

(a) Conf: Sup. Ct. R. 4; C. C. App. R. 10. See notes to Form No. 632.

No. 634.

Order Settling Bill of Exceptions. (a)

[Title of Court and Cause.]

The foregoing bill of exceptions, with the addition thereto of schedule "A," containing the entire charge

of the Court to the jury, is correct in all respects, and is hereby approved, allowed, and settled, and made a part of the record herein.

Dated this —— day of ———, 18—, a day of the ———, 18——, term, and done in open Court.

———,
Judge.

(a) See notes to Forms Nos. 632, 633.

No. 635.

Notice of Filing Bill of Exceptions and Demurrer to Evidence.

[Title of Court and Cause.]

To the above-named plaintiff and to Messrs. ———.

You and each of you are hereby notified that the defendant in the above-entitled cause, desiring and intending to prosecute a writ of error from the judgment of the above-entitled Court in the above-entitled cause, entered on ——— ——, 18—, has prepared and this day filed in the office of the clerk of the above-entitled Court and presented to the Hon. ———, the judge who tried the above-entitled cause, its bill of exceptions and its demurrer to th evidence, a copy of which is herewith this day served upon you.

———,
Attorney for defendant.

Section II.

PETITIONS FOR WRIT OF ERROR AND ORDERS.

No. 636.

Petition for a Writ of Error and Supersedeas by a Defendant. (a)

[Title of Court (lower Court) and Cause.]

XY, defendant in the above-entitled cause, feeling himself aggrieved by the verdict of the jury, and the judgment entered on the —— day of ————, 18——, comes now by M and N, his attorneys, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the honorable the United States Circuit Court of Appeals for the ———— Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the ———— Circuit.

And your petitioner will ever pray.

————,
Attorneys for defendant.

(a) Foster's Fed. Proc., 2d ed., sec. 484, p. 1042.

No. 637.

Order Allowing Writ of Error. (a)

At a stated term, to wit, the ———— term, A. D. 18——, of the Circuit Court of the United States

of America, of the ———— Judicial Circuit, in and for the ———— District of ————, held at the courtroom in the city ———— of ————, on ———. the —— day of ———, in the year of our Lord one thousand ——.

Present: The Honorable ————, Circuit Judge.

[Title of Cause.]

Upon motion of ————. Esq., attorney for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the ———— Circuit the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is, fixed at $500.

(a) See note to Form No. 636.

No. 638.

Petition for Writ of Error by Defendants.

[Title of Court (trial Court) and Cause.]

To the Honorable Judges of the United States Circuit Court of Appeals, ———— Judicial Circuit:

Comes now the above-named defendants, and each of them, by their respective attorneys, and complain that in the record and proceedings had in said cause, and also in the rendition of the judgment in the above-entitled cause in said United States Circuit Court, ———— Circuit, ———— District of ————, at —— term thereof, A. D. 18——, against said defendants, on the —— day of November, 18—, manifest error hath happened to the great damage of said defendants.

Wherefore, said defendants, and each of them, pray for the allowance of a writ of error, and for an order fixing the amount of bond for a supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by the said United States Circuit Court of Appeals for the ——— Judicial District.

Dated this —— day of ———, A. D. 18——.

PAGE & EELS, and
JOHN T. CAREY,
Attys. for defendants.

Allowed:
WM. W. MORROW,
Judge.

No. 639.

Notice of Appeal (Oral).

(Plaintiff Suing in Forma Pauperis—Statement in Judgment.)

Thereupon counsel for plaintiff, in open Court, gave oral notice of appeal from said order and judgment to the United States Circuit Court of Appeals, for the ——— Judicial Circuit, which notice is here and now entered of record herein.

No. 640.

Petition for Writ of Error in Forma Pauperis. (a)

[Title of Court (C. C. App.) and Cause.]

To the Honorable judges of the United States Circuit Court of Appeals for the Ninth Circuit.

Now comes Oswald Sommer, plaintiff in error, and petitions this Honorable Court to allow a writ of error

to be directed to the Circuit Court of the United States for the District of Washington, Western Division, to remove to this, the United States Circuit Court of Appeals for the Ninth Circuit, for a review thereof, the record in the case lately pending in said Court below, wherein above-named plaintiff in error was plaintiff and the above-named defendant in error was defendant, and particularly the record of the judgment rendered by said Circuit Court in the said cause, wherein the said Court below sustained the demurrer of the defendant to the amended complaint of the plaintiff, and dismissed the said plaintiff's said cause at his costs; said judgment was duly entered on record therein on the fifteenth day of October, 1897; that plaintiff be allowed to perfect this appeal without filing a bond as required by law, and without costs and fees of the clerk or other officers of this Court, upon his affidavit made and filed in this cause according to law.

Your petitioner respectfully states that he has this day filed herewith his assignment of errors committed by the Court below in said cause, and intended to be urged by your petitioner and plaintiff in error in the prosecution of this his suit in error.

Dated Oct. 27, 1897.

_____,

Attorney for plaintiff in error.

(a) Desty's Fed. Proc., secs. 335, 336, 337, 338; 27 U. S. Stats. 252.

No. 641.

Order Allowing Writ of Error. (a)

Let a writ of error in the above cause issue as prayed for in the petition, without costs or fees of

clerk or other officer of this Court, and without filing the necessary bonds on appeal.

Dated Oct. 27, 1897.

C. H. HANFORD,

United States District Judge and one of the judges of the United States Circuit Court of Appeals for the Ninth Circuit, presiding at the Circuit Court for the District of Washington.

(a) See notes to Form No. 640.

Section III.

PETITIONS ON APPEAL AND ORDERS.

No. 642.

Petition on Appeal with Allowance Indorsed. (a)

[Title of Court and Cause.]

To the Honorable C. H. Hanford, District Judge, and one of the judges of the above-named Court, presiding therein:

The above-named complainant in the above-entitled cause, New York Guaranty and Indemnity Company, trustee, and George W. Bird and S. Z. Mitchell, as receivers in said cause of the property of the above-named Tacoma Railway and Motor Company, one of the defendants therein, conceiving themselves aggrieved by the order and decree made and entered by the above-named Court in the above-entitled cause under date of March 31, 1897, wherein and whereby, among other things, it was and is ordered and directed that the clerk of said Court pay out of the funds on deposit in said cause, to the above-named intervenor Broderick & Bascom Rope Company, or to

its counsel, Murray & Christian, the sum of six hundred twenty and 45-100 dollars ($620.45), being the principal amount of the judgment and costs embraced in the claim of said intervenor Broderick & Bascom Rope Company set forth in its petition mentioned in said order, do hereby appeal to the United States Circuit Court for the Ninth Circuit from said order and decree, and particularly from that part thereof which directs said clerk to pay said intervenor's claim as aforesaid, for the reasons set forth in the assignment of errors which is filed herewith; and they pray that this their petition for their said appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated April 30, 1897.

BURKE, SHEPARD & WOODS, and
BURKE, SHEPARD & McGILVRA,
Solicitors for New York Guaranty and Indemnity Company, complainant.

CROWLEY & GROSSCUP,
Solicitors for George B. Bird and S. Z. Mitchell, as Receivers of the property of the defendant Tacoma Railway and Motor Company, in said cause.

ORDER.

The foregoing petition on appeal is granted, and the claim of appeal therein made is allowed.

Done in open Court, this May 5, 1897.

C. H. HANFORD,
District Judge, and one of the judges of said United States Circuit Court, presiding therein.

(a) Desty's Fed. Proc., c. 21, secs. 530-546; New York Guaranty etc. Co. v. Rope Co., 48 U. S. App. 668.

No. 643.

Petition for Allowance of Appeal with Supersedeas. (a)

[Title of Court and Cause.]

The above-named complainant conceiving itself aggrieved by the order and decree made and entered in the above-entitled cause on the —— day of May, 18—, wherein and whereby it was ordered, adjudged, and decreed that the receivers in this cause within thirty (30) days from the date of said order and decree, pay over to counsel for the said petitioner, ————, or to the clerk of said Court, for said petitioner, the said judgment and costs, amounting to the sum of ——— dollars, does hereby appeal from the said order and decree of ———, 18——, to the United States Circuit Court of Appeals for the ——— Circuit, for the reasons specified in the assignment of errors filed herein, and it prays that this appeal may be allowed, and that a transcript of the record, papers, and proceedings upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the ———— Circuit.

————,

Solicitors for complainant ————.

(a) Note to Form No. 642; C. C. App. R. 13.

No. 644.

Order Fixing Hearing of Application for Appeal and Suspending Operation of Order. (a)

[Title of Court and Cause.]

Now, on this —— day of ———, 18——, the said complainant, ————, having duly filed in this Court

its assignment of errors and claim of appeal, and for a supersedeas to the United States Circuit Court of Appeals for the ———— Circuit, from that certain order and decree entered in the above-entitled cause on the —— day of ———, 18——, wherein it was ordered and adjudged that the receivers, etc. [as in petition.]

It is hereby by the Court ordered that the hearing for the allowance of said claim of appeal be, and the same hereby is, fixed for the —— day of ———, 18——, at the hour of ten o'clock in the forenoon, at the United States courtroom in the city of ————.

(b) And it is further ordered by the Court that pending the hearing and determination of said application the execution of the order heretofore made in said cause on the —— day of May, ——, be suspended.

————,
Judge.

(a) Note to Form No. 642.
(b) Eq. R. 93.

No. 645.

Petition for Order Allowing Appeal with Supersedeas in Patent Case by Unsuccessful Plaintiff. (a)

[Title of Court and Cause.]

The complainants herein, AB Company, feeling themselves aggrieved by the decretal order made by said Court on the —— day of ———, 18——, and the decree of dismissal made and entered on said day in pursuance of said order, whereby it adjudged and decreed that the respondent herein had not infringed

upon the rights of the said complainants in and under two certain letters patent of the United States, viz.: . . . . and owned by said complainants, being the letters patent sued on herein, and decreed that comp'ainants' bill filed in said cause be dismissed with costs to the respondent, now come by their solicitor and counsel, ————, Esq., and petition the said Court for an order allowing said complainants to prosecute an appeal from said decree to the Honorable United States Circuit Court of Appeals, for the ———— Circuit under and according to the laws of Congress, and the statutes of the United States, in such cases made and provided, and also that an order be made fixing the amount of security which complainants shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals for the ———— Circuit.

And your petitioners will ever pray, etc.

————,

Solicitor for complainants.

(a) Notes to Forms Nos. 642, 643; Zan v. Mackenzie, 48 U. S. App. 304.

No. 646.

Order Allowing Appeal.

At a stated term, to wit, the ———— term, A. D. 18——, of the Circuit Court of the United States of America, of the ———— Judicial Circuit, in and for the ———— District of ————. held at the courtroom in the city and county of ————, on ———, the —— day of ———, in the year of our Lord one thousand eight hundred and ———.

Present: The Honorable ————, United States Circuit Judge for the ———— Circuit, sitting in equity.

[Title of Cause.]

On motion of ————, Esq., solicitor and of counsel for complainants, it is ordered that an appeal to the United States Circuit Court of Appeals for the ———— Circuit, from the final decree heretofore filed and entered herein, be, and the same hereby is allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals. It is further ordered that the bond on appeal be fixed at the sum of ——— dollars, the same to act as a supersedeas bond, and also as a bond for costs and damages on appeal.

Dated ———, 18—.

————,
Circuit Judge.

No. 647.

Petition for Order Allowing Appeal from a Final Decree Made after Mandate on Former Appeal. (a)

[Title of Court and Cause.]

Petition of complainants for an order allowing an appeal from the final decree heretofore entered in this case, to the United States Circuit Court of Appeals for the ———— Circuit.

AB and CD, complainants in the above-entitled cause, feeling themselves aggrieved by the final decree heretofore made and entered by this Court in this

cause on the —— day of ———, 18—, whereby it was ordered, adjudged, and decreed that the said cause be dismissed, and that the said respondent XY have judgment against the said complainants AB and CD for costs amounting to ———, come now by M.., as solicitor and counsel, and petition this Court for an order allowing them, the said complainants, to prosecute an appeal on the said final decree to the Honorable United States Circuit Court of Appeals for the ——— Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the complainants shall give and furnish upon such appeal, and upon the giving of such security all further proceedings in this Court be superseded and stayed until the determination of the said appeal by the said United States Circuit Court of Appeals for the ——— Circuit.

And your petitioner will ever pray, etc.

———,

———,

Solicitors and of counsel for complainants.

(a) Desty's Fed. Proc., sec. 545.

No. 648.

Order Allowing Appeal with Directions Allowing Record to Consist of Transcript on Former Appeal and Subsequent Proceedings.

At a stated term, to wit, the ——— term, A. D. 18—, of the Circuit Court of the United States of America, of the ——— Judicial Circuit, in and for the ——— District of ———, held at the courtroom in the city ——— of ———.

on ———, the —— day of ———, in the year of our Lord one thousand eight hundred and ————.

Present: The Honorable ————, Circuit Judge.

[Title of Cause.]

On reading and filing the petition of AB and CD, complainants herein, for an order allowing an appeal, and the assignment of errors herein made and filed by the said AB and CD, on motion of ————, Esq., of counsel for said complainants and appellants, ————, Esq., counsel for respondent being present, and having withdrawn the objections of respondent to the allowance of appeal herein, it is ordered that an appeal to the United States Circuit Court of Appeals for the ———— Circuit, from the final decree heretofore made, entered, and filed herein on the —— day of ———, A. D. 18——, be and the same is hereby allowed, and that a transcript of the record be forthwith transmitted to the said United States Circuit Court of Appeals for the ———— Circuit, said record to consist of a printed copy of the transcript of the record heretofore used on appeal from the interlocutory decree taken by VW herewith produced by complainants and left with the clerk to be annexed to the transcript, together with a transcript of all proceedings had and taken in the case subsequent to said appeal.

It is further ordered that the amount of the security on appeal herein to be furnished by the said AB and CD be, and the same is hereby, fixed at the sum of ———, and that, upon the making and filing with the clerk of this Court of a good and sufficient bond in said sum by the said AB and CD, all further proceedings, including execution on said final decree, be superseded and stayed until the final determina-

tion of said appeal by the said United States Circuit Court of Appeals, and until the further order of this Court.

And the said ————, Esq., counsel for respondent, having objected to the allowance of any order, or the filing of any bond which will stay execution as to costs allowed in the mandate of the United States Circuit Court of Appeals for the ———— Circuit heretofore filed and entered herein, it is ordered that respondent be, and hereby is, allowed an exception to such part of the foregoing order as grants a stay of execution as to said costs.

No. 649.

Petition for Order Allowing Appeal against Interlocutory Injunction Under Section 7, Evarts Act. (a)

[Title of Court and Cause.]

Come now the above-named respondents, VW and XY, conceiving themselves to be aggrieved by the interlocutory order made and entered in the above-entitled cause in the above-entitled Court on the —— day of ———, 18—, wherein and whereby it was ordered and decreed that the respondents, pending the final hearing and decree herein, be enjoined from using devices or inventions described and covered by reissued letters patent of the United States numbered—— sued upon in said cause and described in complainant's amended bill of complaint, and by which interlocutory order complainant was awarded a preliminary injunction against the said respondents, hereby petition said Court for an order allowing said respondents, and each of them, to prosecute an appeal from said

interlocutory order granting said preliminary injunction to the honorable, the United States Circuit Court of Appeals for the ——— Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the said respondents shall give and furnish upon such appeal, and that upon the giving of such security all further proceedings in this Court be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals for the ——— Circuit.

And your petitioner will ever pray, etc.

————,
Solicitor for VW.

————,
Solicitor for XY.

————, of Counsel.

(a) Desty's Fed. Proc., sec. 180; Southern Pacific Co. v. Earl, 48 U. S. App. 716.

No. 650.

Order Allowing Appeal. (a)

[Title of Court and Cause.]

Upon motion of ————, Esq., counsel for respondents, and on filing petition of VW and XY for order allowing appeal, together with an assignment of errors, it is ordered that an appeal be and is hereby allowed to the United States Circuit Court of Appeals for the ——— Circuit from the interlocutory order entered ————, 18——, granting injunction pendente lite against respondents herein;

that the amount of the bond upon said appeal be, and hereby is fixed at the sum of ——— dollars, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals.

———,
Judge.

(a) Desty's Fed. Proc., 180.

No. 651.

Notice of Appeal in Admiralty by Libelant. (a)

[Title of Court and Cause.]

To the Earnmoor Steamship Company, Limited, and to Messrs. Page & Eells, its proctors:

You are hereby notified that the New Zealand Insurance Company, respondent in the above-entitled cause, intends to and hereby does appeal from the final decree of the District Court of the United States, in and for the Northern District of California entered in the above-entitled action on the twenty-sixth day of June, 1896, to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, July 3, 1896.

ANDROS & FRANK,
Proctors for respondent.

Service of a copy of within notice of appeal acknowledged this third day of July, 1896.

PAGE & EELLS,
Proctors for libelant.

(a) Ad. R. 45.

No. 652.

Petition for Allowance of Appeal in Admiralty. (a)

[Title of Court and Cause.]

To the Honorable William W. Morrow, Judge of the District Court of the United States for the Northern District of California:

And now, by its proctors, Messrs. Andros & Frank, comes the New Zealand Insurance Company, respondent in the above-entitled cause, and, having filed with the clerk of said District Court an assignment of errors, prays this Honorable Court to allow an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of the District Court in the above-entitled cause, entered on the twenty-sixth day of August, 1896.

Dated at San Francisco, the seventh day of August, 1896.

ANDROS & FRANK,
Proctors for respondent.

(a) Ad. R. 45; C. C. App. R. 174, 177, 184; New Zealand Ins. Co. v. Earnmoor S. S. Co., Ld., 48 U. S. App. 245.

No. 653.

Notice of Appeal in Admiralty by Respondent. (a)

[Title of Court and Cause.]

To Alexander Woodside and Isabella Woodside, his wife, Libelants, and to Messrs. Page & Eells, their Proctors:

You are hereby notified that the Canton Insurance Office, Limited, respondent in the above-entitled cause, intends to and hereby does appeal from the

final decree of the District Court of the United States, in and for the Northern District of California, entered in the above-entitled action on the fifth day of January, 1898, to the United States Circuit Court of Appeals, for the Ninth Circuit.

Dated at San Francisco, January 12, 1898.

ANDROS & FRANK,
Proctors for respondent.

(a) Canton Insurance Office, Ltd., v. Woodside, 84 Fed. Rep. 283.

No. 654.

Petition for Appeal in Admiralty. (a)

[Title of Court and Cause.]

To the Hon. ————, Judge of the District Court of the United States for the ———— District of ————.

And now by its proctors, Messrs. Andros and Frank, comes the Canton Insurance Office, Limited, respondent in the above-entitled cause, and prays this honorable Court to allow an appeal to the United States Circuit Court of Appeals for the ——— Circuit from the final decree of the District Court in the above-entitled cause, entered on the —— day of ———, 18——.

Dated at ———, 18——.

ANDROS & FRANK,
Proctors for respondent.

(a) Notes to Form No. 652.

No. 655.

Order Allowing Appeal in Admiralty.

[Title of Court and Cause.]

On the petition of the Canton Insurance Office, Limited, the above-named respondent, praying for the allowance of an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the ——— Circuit, it appearing to the Court that the said respondent has filed its assignment of errors as required by the rules of the Circuit Court of Appeals for the ——— Circuit, it is ordered that the said appeal be, and the same is, allowed as prayed for; and

It is further ordered that the supersedeas bond on said appeal be, and the same is hereby, fixed in the sum of ——— dollars.

Dated at ———, 18——.

———,

Judge.

Section IV.

ASSIGNMENT OF ERROR.

No. 656.

Commencements. (a)

[Title of Court (Trial Court) and Cause.]

(At Law:) Come(s) now the plaintiff(s) or defendant(s),

(In Equity) complainant(s) or respondent(s), and files (file) the following assignment of errors upon which he (or they and each of them) will rely (1) (2).

(1. Error) his (or their) prosecution of the writ of error in the above-entitled cause.

2. Appeal) his (or their) appeal from the decree made by this honorable Court on the —— day of —— ——, 18——, in the above-entitled cause.

(a) C. C. App. R. 11, 14; Desty's Fed. Proc., sec. 530; Sup. C. R. 21.

No. 657.

In admiralty: (b) Comes now the libelant(s) or respondent(s) in the above-entitled cause and assign(s) errors in the decision and decree of the District Court in said cause as follows.

(b) Foster's Fed. Proc., sec. 428.

No. 658.

Errors Commonly Assigned.

Overruling demurrer to pleadings, see Form No. 659, A.

Sustaining demurrer to pleadings, see Form No. 659, B, C, D.

Overruling objection to introduction of evidence, see Form 661, K.

Refusing to permit introduction of evidence, see Form 661, M.

Overruling "demurrer to evidence," see Form 662, T, V.

Denying motion to strike out evidence, see Form 662, T.

Overruling objection to question, see Form 661, L.

Sustaining objection to question, see Form 661, O.

Refusing to permit witness to answer, see Form 661, N.

Overruling motion to direct verdict for, see Form 661, P.

The same (other forms), see Form 660, J.

Allowing testimony to go to jury, see Form 661, S.

Holding patent valid, see Form 660, F.

Holding improvements inventions, see Form 660, G.

Holding improvements were patentable, see Form 660, H.

Refusing to give instructions, see Form 661, Q.

Giving instructions, see Form 661, R.

Rendering judgment on pleadings, see Form 659, E.

Dismissing suit, see Form 664, W.

Granting injunction, see Form 664, X.

For other forms of assignment in patent cases, see Forms Nos. 663, 664, 665, and in admiralty, see Forms Nos. 666, 667, 668.

No. 659.

Assignment of Errors (Action at Law).

(Commencement—Defendant's—see Form No. 657.)

A. I.

That the United States District [or Circuit] Court in and for, etc., erred in overruling the demurrer (a) interposed by defendants and plaintiffs in error to the original complaint filed in said cause.

B. II.

That the said Court erred in sustaining the demurrer interposed by plaintiff and defendant in error to the original answer filed in said cause, and by holding and deciding that the facts stated in said answer filed were not sufficient to constitute a defense to the cause of action in plaintiff's complaint contained.

C. III.

That the said Court erred in sustaining the first ground of the demurrer interposed by plaintiff and defendant in error to the amended answer by defendants and plaintiffs in error, and by adjudging and deciding that said amended answer does not state facts sufficient to constitute a defense to the cause of action in the plaintiff's complaint contained.

D. IV.

That the said Court erred in sustaining the second ground of the demurrer interposed by plaintiff and defendant in error to the amended answer filed as aforesaid in said cause, and by deciding and adjudging that said amended answer does not state facts sufficient to constitute a counterclaim to the cause of action in plaintiff's complaint contained.

E. V.

That the said Court erred in rendering judgment against defendants in said cause upon the pleadings in said cause, and that said judgment is contrary to law and the facts as stated in the pleadings in said cause.

Wherefore, the said defendants and plaintiffs in error pray that the judgment of the said Court be reversed, and such directions be given that full force and efficacy may inure to defendants by reason of the defense set up in their amended answer filed in said cause.

PAGE & EELLS and
JOHN T. CAREY,
Attorneys for defendants and plaintiffs in error.

(a) C. C. App. R. 11, 12.

No. 660.

Assignment of Errors.

(Commencement—Defendant's Action at Law).

F. I.

The United States Circuit Court in and for the, etc., erred in holding that the reissue letters patent of the United States, granted on the seventh day of November, 1893, to John F. Myers, of San Francisco, California, plaintiff herein, numbered 11,383, and the design letters patent granted and issued on the fourteenth day of November, 1893, to the said John F. Myers, and numbered 22,911, and being the letters patent sued on herein, or either of them are good and valid in law; and that the said John F. Myers was the original and first inventor of the alleged improvements described in said reissue letters patent and design letters patent, or either of them, and covered in and by the same or either of them.

G. II.

The said Court erred in holding that the pretended improvements claimed in and by the said reissue letters patent and design letters patent, or either of them, were inventions when produced by the said John F. Myers.

H. III.

The said Court erred in holding that any of the pretended improvements or combinations claimed or covered in and by the said reissue letters patent and design letters patent, or either of them, was or were possessed of patentable novelty when produced by the said John F. Myers.

I. IV.

The said Court erred in denying the motion of the defendant made after plaintiff rested his case that the Court direct the jury to return a verdict for the defendants, upon the ground that the patents covered by the letters patent sued on were void for want of novelty, and that the pretended improvements covered by the said reissue letters patent is a mere aggregation.

J. V.

This Honorable Court erred in denying the motion made by defendants upon the close of the testimony that the Court direct the jury to return a verdict for the defendants, on the ground that from the state of the art as shown to exist by the prior patents in evidence and from a comparison of the older devices with that described in the patents sued upon the claims of the latter do not show patentable novelty, and the pretended improvement covered by said reissue letters patent is a mere aggregation.

No. 661.

Assignment of Errors (Action at Law).

(Commencement—Plaintiff.)

K. 1.

That the United States Circuit Court, in and for the Northern District of California, erred in overruling the objection of counsel for plaintiff in error to the introduction in evidence (a) at the trial of said cause of the patent sued upon in the action, being plaintiff's Exhibit "A," and in admitting the same in evidence.

L. 2.

That the said Court erred in overruling the objection of counsel for plaintiff in error to the following question (a) asked of the witness Abram Block, etc.

M. 5.

That the said Court erred in refusing to permit counsel for plaintiff in error to introduce in evidence, (a) during the cross-examination of the witness, E. T. Earl, the file wrapper and contents of the letters patent sued upon in the action.

N. 6.

That the said Court erred in refusing to permit the witness, E. T. Earl to answer the following question asked by counsel for plaintiff in error, etc.

O. 8.

That the said Court erred in sustaining the objection of counsel for defendant in error to the following question asked during the examination of the witness Geo. W. Prescott, etc.

P. 13.

That the said Court erred in overruling and denying the motion made by counsel for plaintiff in error at the close of the argument and before the charge to the jury to find a verdict for the defendant upon the following grounds:

"1. The testimony entirely fails to show that the said defendant, Robert Graham, has ever at any time since the granting of plaintiff's patent ever made or used or sold any invention covered by the plaintiff's patent, or any car which contained any invention covered by the plaintiff's patent.

"2. The evidence upon both sides of the case affirmatively shows that the said defendant has never at any time since the granting of said patent ever made or used or sold any invention covered by said patent, nor has he made or used or sold any car containing any invention covered by said patent."

Q. 14.

That the said Court erred in refusing to give to the jury the following instruction requested by the plaintiff in error [set out the instruction] (b).

R. 53.

That the said Court erred in giving the following instruction during the course of the charge to the jury [set out the instruction] (b).

S. 55.

That the said Court erred in allowing testimony to go to the jury during the trial of said cause, over the objection of defendant's counsel, to the effect that the plaintiff was the inventor of the car, together with its refrigerating and ventilating apparatus, instead of being the inventor of a ventilating apparatus only.

Wherefore, the said Robert Graham, plaintiff in error, prays that the judgment of the Circuit Court of the United States for the Northern District of California be reversed and that the said Circuit Court be directed to grant a new trial of said cause.

WHEATON, KALLOCH & KIERCE,
Attorneys for Plaintiff in Error, Defendant in the Lower Court.

L. L. COBURN,
Of Counsel.

(a) C. C. App. R. 11, 12.

(b) C. C. App. R. 11.

No. 662.

Assignment of Errors.

(Commencement—Defendant—Law).

T. V.

That said Court erred in overruling the demurrer (a) of counsel for plaintiff in error to the evidence as offered, and in denying the motion of counsel for plaintiff in error to strike out the evidence offered on behalf of the defendant in error, and to withdraw the case from the consideration of the jury, and for a nonsuit made at the point during the trial of said cause when counsel for defendant in error announced that the defendant in error had offered all the testimony in her possession on the question of agency, and had announced a rest as to all but evidence of, etc.

V. IX.

That said Court erred in overruling the demurrer (a) of counsel for plaintiff in error to the evidence at the close of the case.

(a) C. C. App. R. 11, 12.

No. 663.

Assignment of Errors.

In the Circuit Court of the United States for the Northern District of California.

EDWIN NORTON and OLIVER W. NORTON,
Complainants,
vs.
SAN JOSE FRUIT PACKING COMPANY,
Respondent.
No. 11,828.

(Commencement—Plaintiffs—Equity.)

W. I.

In dismissing the said suit and entering a final decree therein in favor of the said ———— for its costs against ————.

X. II.

In not making, rendering, and entering a decree in favor of the said ————, and against the ————, sustaining the validity of the patents sued on, adjudging an infringement thereof by the respondent, and granting an injunction against the respondent restraining it from further infringement.

III.

In holding and deciding that the machine used by the respondent was not an infringement of the letters patent sued on herein.

No. 664.

Assignment of Errors.

(Commencement—Plaintiff's—Appeal.)

The United States Circuit Court for the Northern District of California, which entered the decree of dismissal of complainant's bill in said cause, erred as follows:

I.

In deciding that the respondent, ————, had not infringed upon the exclusive rights of the complainants in and under the letters patent of the United States, No. ———, for "———," issued to ———— on the —— day of ———, 18—, being one of the letters patent sued on.

III.

In dismissing complainants' bill.

In order that the foregoing assignment of errors may be and appear of record, the complainants present the same to the Court, and pray that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided, and complainants pray a reversal of the decretal order and decree of dismissal made and entered by said Court.

————,

Solicitor for Complainants.

———

No. 665.

Assignment of Errors on Appeal Under Section 7 of Evarts Act.

[Title of Court and Cause.]

The respondents file the following assignment of errors upon which they and each of them will rely

upon their appeal from the interlocutory order made by this honorable Court on the —— day of ———, 18—, granting an injunction in said cause:

The respondents assign as error upon this appeal the following, viz:

The Circuit Court erred in making the interlocutory order granting an injunction in this case for the following reasons, to wit:

1.

The said Court did not have jurisdiction of the respondent, X Y.

2

The said Circuit Court did not have jurisdiction of the respondent, Z.

3.

There was no proof showing that the respondent, X Y, had either infringed or had threatened to infringe the complainant's letters patent herein sued upon.

4.

There was no proof made showing that the respondent Z, had either infringed or threatened to infringe the complainant's said letters patent.

5.

The proof showed affirmatively and without contradiction that said respondent, X Y, had not infringed or threatened to infringe the complainant's said letters patent.

6.

The proof showed affirmatively and without contradiction that the respondent, Z, had not infringed and had not threatened to infringe the complainant's said letters patent.

7.

The proof showed that the complainant's said letters patent were invalid and void, and could not in law be sufficient foundation on which to either maintain this action or on which to grant an injunction.

8.

The said Circuit Court erred in treating the verdict of the jury in the former suit at law as any foundation or any part of the foundation upon which to grant an injunction in this case, for the reason that it was not shown which claims of the patent the said jury had determined were infringed, or which claims of the said patent the said jury had determined were valid.

In order that the foregoing assignment of errors may be and appear of record, the respondents present the same to the Court, and pray that such disposition be made thereof as in accordance with law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

J. E. FOULDS,
Solicitor for Respondent, X Y.
WHEATON, KALLOCH & KIERCE,
Solicitors for Respondent, Z.

No. 666.

Assignment of Errors. (a)

(Commencement—Respondent—Admiralty.)

First.—The Court erred in finding that the libelant was entitled to recover from the respondent interest on the principal sum of ——— dollars, by

the final decree of said Court adjudged to be due from said respondent to said libelant, from the —— day of ——, 18—, up to the entering of said final decree on the —— day of ———, 18—, and in entering judgment therefor in favor of said libelant and against said respondent.

Second.—The Court erred in entering a judgment in said action in favor of said libelant and against said respondent for interest on the principal sum of ——— dollars, adjudged by the final decree of said Court entered on the —— day of ———, 18—, to be due from said respondent to said libelant.

ANDROS & FRANK,
Proctors for Respondent and Appellant.

(a) Sup. Ct. R. 23.

No. 667.

Assignment of Errors.

(Commencement—Respondent—Admiralty.)

1. The Court erred in not finding that, under the true, legal construction of the phrase in said policy, "warranted free from all average," the libelants were not entitled to a recovery under the policy, if any part of the subject of the insurance other than such parts thereof as might be actually in use and on their persons at the time of the loss, was saved in specie, though in a damaged condition.

2. The Court erred in not finding that the true legal construction of the phrase in said policy, "warranted free from all average," imports an absolute total loss, by perils insured against, in specie of the whole of the subject insured, except such parts thereof as might be actually in use on the persons of the insured at the time of the said loss.

3. The Court erred in finding that the contract of insurance declared on was a severable contract, and in not finding that the said contract was entire and not severable.

4. The Court erred in finding that under the facts of the case as disclosed by the evidence the said libelant were entitled to a recovery under said contract of insurance, and in not finding that said libelants were not entitled to recover any sum whatsoever.

5. The Court erred in finding that said libelants were entitled to recover under said contract of insurance the sum of two thousand dollars.

ANDROS & FRANK,
Proctors for Respondent.

No. 668.

Assignment of Errors.

(Commencement—Respondent—Admiralty.)

1.

The Court erred in holding that upon the facts appearing on the trial of said cause the libelant's intestate had not violated the covenant and warranty, contained in the fourth clause of the policy of insurance sued on, made, and agreed to by the said intestate, the assured, that he and the said vessel should not use ports or places on the west coast of North America, north of San Francisco (excepting such ports and places as are specially permitted in said cause), by sailing for and going up to the buoy at the entrance of the bar off Suislaw river, intending to enter the same.

The Court erred in holding that upon the facts appearing on the trial of the said cause and within the meaning of said policy, the sailing for and going up to said buoy, with intention to enter Suislaw river, was not a user of said port or place, and was not forbidden by said warranty or covenant.

3.

The Court erred in holding that upon the facts appearing on the trial of said cause the true meaning of the said clause in said policy was merely a prohibition of the use of the port or place itself by actually being therein.

4.

That the Court erred in holding that upon the facts appearing upon the trial, the loss of the said vessel was not caused by the willful or gross negligence and fraud of the assured.

5.

That the Court erred in holding that libelant was entitled to recover, and in granting and entering its decree in her favor, and in not entering a decree in favor of the respondent.

PAGE & EELLS,
Proctors for Respondent.

Section V.

APPEAL BONDS AND ORDERS.

No. 669.

Order Fixing Amount of Bond on Writ of Error.

(a)

[Title of Court and Cause.]

The defendant, ————, having this day filed

its petition for a writ of error from the decision and judgment thereon made and entered herein, to the United States Circuit Court of Appeals in and for the —— Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which defendant should give and furnish upon said writ of error, and that upon the giving of said security, all further proceedings of this Court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the —— Judicial Circuit, and said petition having this day been duly allowed:

Now, therefore, it is ordered, that upon the said defendant, ————, filing with the clerk of this court a good and sufficient bond in the sum of ———— dollars, to the effect, that if the said defendant ————, and plaintiff in error shall prosecute the said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the said obligation to be void; else to remain in full force and virtue, the said bond to be approved by the Court that all further proceedings in this court be, and they are hereby suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals.

Dated ————, 18—.

————,
Judge.

(a) Desty's Fed. Proc., secs. 533, 540; Sup. Ct. R. 29 C. C. App. R. 13.

No. 670.

Bond on Writ of Error. (a)

[Title of Court and Cause.]

Know all men by these presents, that we, ————, as principal, and ————, as surety, are held and firmly bound unto ————, plaintiff above-named, in the sum of ——— dollars, to be paid to the said ————, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the —— day of ———, 18—.

Whereas, the above-named defendant, ————, has sued out a writ of error to the United States Circuit Court of Appeals, for the ——— Circuit, to reverse the judgment in the above-entitled cause by the Circuit Court of the United States for the District of ————.

Now, therefore, the condition of this obligation is such that if the above-named ———— shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(a) See notes to Form No. 669.

No. 671.

Bond on Writ of Error—Costs.

(Another Form.)

Know all men by these presents, that we, ————, as principal, and ———— and ————, as sure-

ties are held and firmly bound unto ———— in the full and just sum of five hundred dollars, to be paid to the said ————, his certain attorneys, executors, administrators, or assigns to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this —— day of ———, in the year of our Lord one thousand eight hundred and ———.

Whereas, lately at a session of the Circuit Court of the United States for the ——— District of ———, in a suit pending in said court between ————, plaintiff, and ————, defendant, a final judgment was rendered against the said defendant, and the said ————, defendant, having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to said ———— is about to be issued, citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the ——— Circuit, to be holden at ———.

Now, the condition of the above obligation is such, that if the said ———— shall prosecute his writ of error to effect and shall answer all damages and costs that may be awarded against him, if he fails to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

(a) Desty's Fed. Proc., sec. 533; Sup. Ct. R. 29; C. C. App. R. 13.

No. 672.

Bond on Appeal Under Section 7 of Evarts Act.

[Title of Court and Cause.]

Know all men by these presents, that we, the Southern Pacific Company, a corporation, and Robert

Graham, as principals, and Winfield S. Davis and Fred J. Koster, as sureties, are jointly and severally held and firmly bound unto the above-named Edwin T. Earl, in the sum of five hundred dollars ($500), lawful money of the United States of America, to be paid to the said Edwin T. Earl, his executors or administrators, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the —— day of ———, in the year of our Lord one thousand eight hundred and ———.

The condition of the above obligation is such, that, whereas said Southern Pacific Company and Robert Graham have taken an appeal to the Circuit Court of Appeals for the ——— Circuit, to reverse an interlocutory order rendered and entered by the Circuit Court of the United States, ——— Judicial Circuit, in and for the ——— District of ———, which order was made and entered in the above-entitled suit on the —— day of ———, 18—.

Now, therefore, the condition of the above obligation is such, that if the above-named Southern Pacific Company and Robert Graham, Respondents herein, shall prosecute said appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

[Endorsed]: The within bond is hereby approved this —— day of ———, 18—.

———,
Judge.

(a) Desty's Fed. Proc., sec. 180; C. C. App. R. 13, sec. 2.

No. 673.

Bond on Appeal.

[Title of Court and Cause.]

Know all men by these presents, that we, Zan Brothers and Company (a firm composed of F. Zan, M. Zan, and M. Planich, doing business in the city and county of San Francisco, State of California, John W. Bradshaw and the Chicago Ferrule Company (a corporation), as principals, and Paul Keyser and Louis Feldman, Jr., as sureties, are held and firmly bound unto George F. Mackenzie in the full and just sum of five hundred dollars, to be paid to said George F. Mackenzie, his attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this sixteenth day of March, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at a session of the Circuit Court of the United States, for the Northern Disrtict of California, in a suit pending in said Court between the said Zan Brothers & Company, J. W. Bradshaw, and Chicago Ferrule Co., complainants, and George F. Mackenzie, respondent, a decree was rendered against the said Zan Brothers & Company, J. W. Bradshaw, and Chicago Ferrule Company, and the said Zan Brothers & Company, J. W. Bradshaw, and Chicago Ferrule Company, having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit, and a citation directed to the said George F. Mackenzie is about to be issued citing and admonishing him to be and appear at the United

States Circuit Court of Appeals, for the Ninth Circuit, to be holden at San Francisco, California.

Now, the condition of the above obligation is such that if the said Zan Brothers & Company, J. W. Bradshaw and Chicago Ferrule Co., shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

ZAN BROS. & CO., by F. ZAN. [Seal]
PAUL KEYSER. [Seal]
LOUIS FELDMANN, Jr. [Seal]

Sufficiency of sureties on the foregoing bond approved this seventeenth day of March, 1896.

JOSEPH McKENNA,
Judge.

(a) See Notes to Form No. 669.

No. 674.

Bond on Admiralty Appeal. (a)

[Title of Court and Cause.]

Know all men by these presents, that we, the New Zealand Insurance Company, and the American Surety Company of New York, are held and firmly bound unto the Earnmoor Steamship Company, Limited, in the sum of fifteen hundred and fourteen dollars, to be paid to the aforesaid Earnmoor Steamship Company, Limited, its successors or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this seventh day of August, 1896.

Whereas, the above-named New Zealand Insurance Company has appealed to the United States Circuit Court of Appeals, for the Ninth Circuit, from a decree in favor of the above-named libelant, made and entered on the twenty-sixth day of June, 1896, in the above-entitled action, by the District Court of the United States for the Northern District of California, praying that said decree may be reversed.

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute its appeal to effect, and shall answer all damages and costs if it fails to make its appeal good, then this obligation shall be void, otherwise the same shall remain in full force and effect.

In witness whereof, etc.

The foregoing bond may be approved as to form, amount, and sufficiency of sureties.

PAGE & EELLS,

Proctors for libelant and appellee.

This bond approved as to form, amount, and sufficiency of sureties.

WM. W. MORROW,

Judge of the United States District Court, Northern District of California.

(a) See notes to Form No. 669.

No. 675.

Bond on Admiralty Appeal.

(Another Form.)

Know all men by these presents, that we, Thames & Mersey Marine Insurance Company, Limited, as

principal, and John Rosenfeld and Jacob Eppinger, as sureties, are held and firmly bound unto Mary O'Connell, administratrix of the estate of Thomas O'Farrell, deceased, in the full and just sum of twenty-five hundred dollars, to be paid to the said Mary O'Connell, administratrix, her certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and adminstrators jointly and severally, by these presents. Sealed with our seals and dated this seventh day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas, lately at a District Court of the United States, for the Northern District of California, in a suit depending in said Court, between Mary O'Connell, administratrix of the estate of Thomas O'Farrell, deceased, libelant, and the Thames & Mersey Marine Insurance Company, Limited, respondent, a decree was rendered against the said respondent, and the said respondent having obtained from said Court an order allowing an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Mary O'Connell, administratrix, etc., libelant, citing and admonishing her to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the ——— next.

Now, the condition of the above obligation is such that if said Thames & Mersey Marine Insurance Company, Limited, shall prosecute its appeal to effect, and answer all damages and costs, if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

No. 676.

Stipulation Fixing Bond on Appeal.

Stipulated and consented that the bond of libelant on appeal to the United States Circuit Court of Appeals in the above-entitled cause may be fixed at the sum of three hundred dollars, and that the same when filed shall be effective as a bond for costs on such appeal, and as a supersedeas bond as well.

MASTICK, BELCHER & MASTICK,
Proctors for respondents.

No. 677.

Order of Court Fixing Amount of Bond on Appeal. (a)

In this cause, on motion of proctor for libelant, and pursuant to stipulation of proctors for respondents, on file here, it is ordered that the bond of libelant, on appeal, herein be, and the same hereby is, fixed at the sum of three hundred dollars.

WM. W. MORROW,
Judge.

(a) See notes to Form No. 669.

No. 678.

Bond on Appeal.

[Title of Court and Cause.]

Know all men by these presents, that Pacific Coast Steamship Company, a corporation, as princi-

pal, and Edwin Goodall and C. M. Goodall, as sureties, are hereby held and firmly bound to the aforesaid respondents, their administrators, executors, and assigns in the sum of three hundred ($300) dollars, United States gold coin, to be paid to the aforesaid respondents, their administrators, executors, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Dated this twenty-fourth day of January, 1896.

Whereas, the above-named libelant has appealed to the Circuit Court of Appeals of the United States, Ninth Circuit, to reverse the decree in the above suit by the District Court of the United States for the Northern District of California.

Now, therefore, the conditions of this obligation are such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, if he fails to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

Subscribed and sworn to, etc.

[Seal] JAMES L. KING.

We are satisfied with the within bond and the sureties thereon.

MASTICK, BELCHER & MASTICK,
Proctors for respondents.

Approved:

WM. W. MORROW, Judge.

Section VI.

WRITS OF ERROR.

No. 679.

Writ of Error. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States, to the Honorable (b) the Judge of the Circuit Court of the United States for the Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court (or of appeals) before you, or some of you, between Herbert D. Gaskill and James I. Regan, plaintiffs in error, and John F. Myers, defendant in error, a manifest error hath happened, to the great damage of the said Herbert D. Gaskill and James I. Regan, plaintiffs in error, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit (or the Supreme Court of the United States), together with this writ, so that you have the same at the city of San Francisco, in the State of California (or Washington), on the twenty-ninth day of May next, in the said Circuit Court of Appeals (or Supreme Court), to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals (or

Supreme Court) may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the thirtieth day of April, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal] W. J. COSTIGAN,
Clerk of the United States Circuit Court for the Ninth Circuit, Northern District of California.

Allowed by:

(d) WM. W. MORROW,
District Judge.

Service of within writ of error and receipt of a copy thereof is hereby admitted this first day of May, 1896.

JOHN L. BOONE,
Attorney for defendant in error.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California (or of Appeals for the ———— Circuit).

The record, and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit (or Supreme Court of the United States), within mentioned, at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal] AB.
Clerk.

(a) Desty's Fed. Proc., secs. 530, 535, 537; Sup. Ct. R. 8; C. C. App. R. 14.

(b) If the appeal be from the Circuit Court of Appeals, the writ will be directed to "the Judges of the United States Circuit Court of Appeals for the ——— Circuit."

(c) If the appeal is to the Supreme Court, the writ will be signed by the clerk of the Supreme Court of the United States.

(d) Or by XY, Justice.

No. 680.

Writ of Error to State Court. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States, to the Honorable, the Judges of the Supreme Court of the State of Washington, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of ————, before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit, between the Standard Life & Accident Insurance Company, defendant and plaintiff in error, and Eliza M. Fraser, plaintiff and defendant in error, (1) wherein was drawn in question the validity of a treaty (or statute) of (or an authority exercised under) the United States, and the decision was against their validity, or (2) wherein was drawn in question the validity of a statute of (or an authority exercised under) said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or (3) wherein was drawn in question the construction of a clause of the

constitution of (or of a treaty, or statute of, or commission held under) the United States, and the decision was against the right, title, privilege, or exemption specially set up or claimed under such clause of the said constitution (treaty, statute, or commission), a manifest error hath happened, to the great damage of the said Standard Life & Accident Insurance Company, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the —— day of ——— next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the —— day of ———, 18—.

[Seal] ———,

Clerk of the Supreme Court of the United States.

Allowed by:

———,

Justice.

(a) Desty's Fed. Proc., sec. 536.

No. 681.

Writ of Error. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States of America to the Honorable Arthur K. Delaney, Judge of the United States District Court for the District of Alaska, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, between S. A. Bonnifield and John G. Heid, plaintiffs, and Willis Thorp, defendant, a manifest error has happened, to the great prejudice and damage of the said defendant, Willis Thorp, as is said and appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said circuit on the ninth day of March, 1896, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this tenth day of February, 1896.

Attest my hand and seal of the United States District Court for the District of Alaska, at the clerk's office at Sitka, Alaska, on the day and year last above written.

[L. S.] CHARLES D. ROGERS,
Clerk United States District Court, for the District of Alaska.

Allowed this tenth day of February, 1896.

ARTHUR K. DELANEY,
Judge of the United States District Court, for the District of Alaska.

(a) See notes to Form No. 679; Desty's Fed. Proc., sec. 214.

No. 682.

Introduction in Writ of Error to District Court.

UNITED STATES OF AMERICA.—ss.

The President of the United States, to the Honorable, the Judge of the District Court of the United States for the Northern District of Idaho, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between ————, plaintiff in error, and ————, defendant in error, a manifest error hath happened, to the great damage of the said ————, plaintiff in error, as by his complaint appears.

We, being willing, etc.

Section VII.

CITATIONS AND RETURNS.

No. 683.

Citation. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States, to the City of Spokane, Washington, and W. H. Plummer, its Attorney, Greeting:

You are hereby cited and admonished to be and appear at the (b) United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal (or writ of error) filed in the clerk's office of the Circuit Court of the United States for the District of Washington, Western Division, wherein O. N. Denny, receiver of the Portland Savings Bank, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said appeal (or writ of error) mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this twelfth day of May, A. D. 1896, and of the Independence of the United States the one hundred and twentieth.

C. H. HANFORD,
United States District Judge, presiding in the Circuit Court.

Attest:

A. REEVES AYRES,
Clerk.

United States of America,
District of Washington. } ss.

I hereby certify that I served the within citation on H. N. Belt, mayor of the city of Spokane, Washington, on the thirteenth day of May, 1896, at the city and county of Spokane, in the District of Washington, by then and there delivering to the said H. N. Belt, mayor, personally, a true copy of the within citation.

And I further certify that I served the within citation on the within-named W. H. Plummer, attorney for defendant, on the fourteenth day of May, 1896, at the city and county of Spokane, in the District of Washington, by then and there delivering to said W. H. Plummer, personally, a true copy of the within citation.

Dated at Spokane, in the District of Washington, this fourteenth day of May, 1896.

JAMES C. DRAKE,
U. S. Marshal.

By Sam Vinson,
Deputy.

Marshal's Fees:

Service 2 citations.....$8 00
Mileage 24

$8 24

(a) See Desty's Fed. Proc., secs. 530, 531, 532, 545; Sup. C. R. 8.

(b) If the citation is to the Supreme Court, insert "a Supreme Court of the United States at Washington."

No. 684.

Citation. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States to XY, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the ———— Circuit, to be holden at the city of ————, in the State of ————, on the —— day of ——— next, pursuant to an order allowing an appeal entered in the clerk's office of the Circuit Court of the United States, for the ———— District of ————, in that certain action, numbered ———, in which AB and CD are complainants and appellants, and you are respondent and appellee, to show cause, if any there be, why the decree rendered against the said complainants and appellants, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable ————, Judge of the United States Circuit Court in and for the ———— District of ————, this —— day of ———, A. D. 18—.

————,
Circuit Judge.

Service of the within citation and receipt of a copy thereof admitted this —— day of ———, 18—.

MN,
Solicitor for XY, appellee and respondent in lower Court.

(a) See notes to Form No. 683.

No. 685.

Citation on Appeal in Admiralty. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States, to Alexander Woodside and Isabella Woodside, his wife, and to Messrs. Page & Eells, their proctors, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the thirty-first day of January, 1898, pursuant to an order allowing an appeal duly entered and of record in the clerk's office of the District Court of the United States for the Northern District of California, wherein the Canton Insurance Office, Limited, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in the said order allowing appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JOHN J. DE HAVEN, Judge.

(a) See notes to Form No. 683.

No. 686.

Citation on Appeal in Admiralty. (a)

In the District Court of the United States for the District of Oregon.

In the Matter of the Petition of the Oregon Railway and Navigation Company, as the Owner of the Barge "Columbia," and the Oregon Short Line and Utah Northern Railway Company, as Lessee thereof, to Limit Liability for Damages Done by the said Barge "Columbia."

United States of America, District of Oregon. } ss.

The President of the United States, to Robert Balfour, Stephen Williamson, Alexander Guthrie, Robert Brodie Forman, R. Bruce, and Walter J. Burns, partners as Balfour, Guthrie & Co., and Malvina Short, administratrix of the estate of Marshal B. Short, deceased, and Sven Anderson, administrator of the estate of John August Peterson, deceased, and Anna C. Larson, mother of John August Peterson, deceased, the Oregon Short Line and Utah Northern Railway Company and the Oregon Railroad and Navigation Company, Greeting:

You, and each of you, are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, on or before the fifth day of February, 1898, pursuant to an appeal filed in the office of the clerk of the District Court of the United States for the District of Oregon, in the above-

entitled proceeding, wherein the Oregon Railway and Navigation Company is appellant and you are respondents, to show cause, if any there be, why the decree entered in the above-entitled proceeding on December 20, 1897, upon the vacation and setting aside of the decree entered therein on August 2, 1897, in favor of the said Robert Balfour, Stephen Williamson, Alexander Guthrie, Robert Brodie Forman, R. Bruce, and Walter J. Burns, partners as Balfour, Guthrie & Co., and Malvina Short, administratrix of the estate of Marshal B. Short, deceased, and Sven Anderson, administrator of the estate of John August Peterson, deceased, thereby appealed from, should not be corrected and reversed and speedy justice should not be done to the parties in that behalf.

Witness, the Hon. MELVILLE W. FULLER, Chief Justice of the United States, this twenty-second day of January, 1898.

CHARLES B. BELLINGER,
Judge.

Service of the foregoing citation is hereby accepted this twenty-fourth day of January, 1898.

C. E. S. WOOD,
Proctor for Robert Balfour, Stephen Williamson, Alexander Guthrie, Robert Brodie Forman, R. Bruce, and Walter J. Burns, partners as Balfour, Guthrie & Co.

————,
Proctor for Malvina Short and Sven Anderson, and Anna C. Larson.

COX, COTTON, TEAL & MINOR,
Proctors for the Oregon Short Line and Utah Northern Railway Company.

COX, COTTON, TEAL & MINOR,
Proctors for the Oregon Railroad and Navigation Company.

Return.

United States of America, } ss.
District of Oregon. }

I hereby certify that on the twenty-fourth day of January, 1898, at Portland, Multnomah county, in said district, I duly served the within citation upon E. B. Watson, Proctor for Malvina Short, Sven Anderson, and Anna C. Larson, by delivering to him, personally, a true copy of said citation, duly certified by me as United States marshal, and also certified as such by W. W. Cotton, proctor for appellant.

ZOETH HOUSER,
United States Marshal.
By J. A. Wilson,
Deputy.

(a) See notes to Form No. 683.

No. 687.

Marshal's Return to Citation. (a)

[Title of Court and Cause.]

I, ————, United States Marshal, for the District of ————, do hereby certify that I received the annexed citation on the —— day of ———, A. D. 18—, and on the same day duly served the same upon ————, by delivering to and leaving with said ————, in ——— county, District of ———, ————, a full, true, and correct copy of said citation, certified to by the clerk of the Circuit Court of the District of ————, ————, under the seal of said Court, to be a correct copy of said citation.

Witness my hand, this eighteenth day of December, A. D. 1895.

————,

United States Marshal for the District of ————.

By ————, Deputy.

Marshal's fees, $————.

(a) Sup. Ct. R. 8.

Section VIII.

WRITS OF MANDATE.

No. 688.

Writ of Mandate. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the District of Oregon, Greeting:

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

Whereas, lately in the District Court of the United States for the District of Oregon, before you, or some of you, in a cause between the barge "Columbia," Oregon Railway and Navigation Company, and the Oregon Short Line and Utah Northern Railway Company, libelants and petitioners, and Malvina Short, administratrix of the estate of Marshal B. Short, deceased, Sven Anderson, administrator of the estate of John August Peterson, deceased, Anna C. Larsen, William Boyce, and Balfour, Guthrie & Company, respondents, a decree was duly filed and entered in said District Court on the nineteenth day of February, 1894, which said decree was, on the

twenty-sixth day of February, 1894, duly modified by order of the Court, which said decree and order of Court are of record in the office of the clerk of said District Court, and to which reference is hereby made, and the same are hereby expressly made a part hereof, and as by the inspection of the transcript of the record of the said District Court, which was brought in the United States Circuit Court of Appeals, for the Ninth Circuit, by virtue of an appeal agreeably to the act of Congress, in such cases made and provided, fully and at large appears.

And whereas, in a term of October, and in the year of our Lord one thousand eight hundred and ninety-five, the said cause came on to be reheard before the said Circuit Court of Appeals, on the said transcript of record, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, reversed, with costs, and the cause remanded to said District Court for further proceedings not inconsistent with the opinion of this Court.

(Feb. 10, 1896.)

You, therefore, are hereby commanded that such reversal and further proceedings be had in said cause, not inconsistent with the opinion and decree of this Court, and as according to right and justice, and the laws of the United States, ought to be had, the said decree of said District Court notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United

States, the twelfth day of March, in the year of our Lord one thousand eight hundred and ninety-six.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

(a) Desty's Fed. Proc., sec. 213; Sup. Ct. R. 24; C. C. App. R. 32.

No. 689.

Mandate from United States Circuit Court of Appeals. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States of America, to the Honorable, the Judges of the Circuit Court of the United States for the Northern District of California, Greeting:

[Seal]

Whereas, lately in the Circuit Court of the United States, for the Northern District of California, before you, or some of you, in a cause between Edwin Norton and Oliver W. Norton, complainants, and Milton A. Wheaton, respondent, an interlocutory decree was duly filed and entered, in favor of said complainants, which said decree is of record in the office of the clerk of said Circuit Court; to which record reference is hereby made and the same is hereby expressly made a part hereof, and as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals, for the Ninth Circuit, by virtue of an appeal agreeably to the act of Congress, in such cases made and provided, fully and at large appears.

And whereas, in a term of October, and in the year of our Lord, one thousand eight hundred and ninety-five, the said cause came on to be reheard before the said Circuit Court of Appeals, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby reversed, with costs, and the cause is remanded with directions to said Circuit Court to dismiss the bill at complainants' cost.

(October 31, 1895.)

You, therefore, are hereby commanded that such reversal and further proceedings be had in said cause, not inconsistent with the opinion and decree of this Court, and as according to right and justice, and the laws of the United States, ought to be had, the said decree of said Circuit Court notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the nineteenth day of March, in the year of our Lord, one thousand eight hundred and ninety-six.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Cost of Appellant.

Clerk's fees in lower Court preparing record	$119.00
Clerk's fees, 12 copies of patents for original transcript	1.20
Clerk's fees, Circuit Court of Appeals, filing record, etc.	25.00
Clerk's fees, order recalling mandate, etc.	.20
Clerk's fees, issuing second mandate	5.00

(a) Desty's Fed. Proc., sec. 213; C. C. App. R. 32.

No. 690.

Mandate from Supreme Court of the United States to the Circuit Court. (a)

UNITED STATES OF AMERICA.—ss.

The President of the United States of America, to the Honorable, the Judges of the Circuit Court of the United States for the District of Oregon, Greeting:

[Seal of the U. S. Supreme Court.]

Whereas, lately in the Circuit Court of the United States for the District of Oregon, before you, or some of you, in a cause between John Simpson, libelant and appellant, and the steamer "Oregon," her tackle, etc., the Oregon Short Line and Utah Northern Railway Company, claimant, appellee, and the Oregon Short Line and Utah Northern Railway Company, libelant and appellant, and the ship "Clan Mackenzie," her tackle, etc., John Simpson, claimant, and John Simpson, Helen J. Simpson, George H. Beaumont et al., intervenors, appellees, wherein the decree of the said Circuit Court, entered in said cause on the sixteenth day of June, A. D. 1891, is in the following words, viz:

"It is, therefore, pronounced and decree that said claimant, the Oregon Short Line and Utah Northern Railway Company, do within thirty days from the date of this decree pay into the registry of this Court the sum of thirty-five thousand five hundred and thirty-one dollars and nineteen cents, with interest at the legal rate from the date of the final decree in the District Court, together with the proportion of costs found due from said claimant and to be taxed, and that in default thereof that execution issue against said stipulators therefor, and it is further

adjudged and decreed that the clerk of this Court distribute said sums as follows: First, to the payment of the costs and disbursements of said intervenor; second, that he pay to said intervenors the several amounts due to each of them; and, third, that he pay the libelant, John Simpson, the balance of said amount; whereupon said appellant moves the Court for the allowance of appeals to the United States Supreme Court; which motion is hereby allowed.

LORENZO SAWYER,
United States Circuit Judge, Ninth Judicial Circuit.

As by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by John Simpson and a cross-appeal taken by the Oregon Short Line & Utah Northern Railway Company, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord, one thousand eight hundred and ninety-four, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, on appeal and cross-appeal, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby reversed, with costs to the original libelant as against the steamship "Oregon," and with costs to the "Oregon" as against the intervenors; and that the said libelant, John Simpson, recover against the said, the Oregon Short Line and Utah Northern Railway Company, claimant of the steamer "Oregon," five hundred and ninety-four dollars

and ninety cents for his costs herein expended, and have execution therefor; and that the said, the Oregon Short Line and Utah Northern Railway Company, claimant of the steamer "Oregon," recover against the said intervenors, John Simpson, Helen J. Simpson, George H. Beaumont et al., two hundred and eight-three dollars and forty-three cents for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court for further proceedings in conformity with the opinion of this Court. May 6, 1895.

And afterward, to wit, on the third day of June, 1895, the following entry appears of record, viz:

It is ordered by the Court that the decree heretofore entered in this cause by this Court be, and the same is hereby, amended by adding thereto the following words: "Without prejudice, however, to the right of the Court below, or of the District Court, in its discretion, or treat the intervening petitions as independent libels, and to issue process thereon against the steamer 'Oregon," her owners or charterers, and to take such other proceedings therein as justice may require."

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeals notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the eleventh day of June, in the year of our Lord, one thousand eight hundred and ninety-five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

(a) Desty's Fed. Proc., sec. 213; Sup. C. R. 24.

Section IX.

SUPREME COURT PROCEEDINGS.

No. 693.

Praecipe for Appearance in Supreme Court. (a)

Supreme Court of the United States.

AB.
Appellant,
vs.
XY,
Respondent.
} Term, 18—. No. ——.

The clerk will enter my appearance as counsel for the [respondent]. (b)

(a) Sup. Ct. R. 9.

(b) To be signed by a member of the United States Supreme Court Bar in his individual name. Firm names not to be signed.

No. 694.

Motion to Dismiss or Affirm. (a)

In the Supreme Court of the United States.

Term, 18—.

No. ——.

[Title of Cause.]

Comes now the appellee herein by ————, his counsel, appearing in that behalf, and moves the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction because (b) the judgment or decree from which the said appeal purports to have been taken is the judgment or decree of the Supreme Court of one of the United States, to wit, the Supreme Court of the State of ————.

And the said appellee, by counsel as aforesaid, also moves the Court to affirm the said judgment or decree from which the said appeal purports to have been taken, because, although the record in the said cause may show that this Court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only. (a)

_____,

Counsel for appellee for the purposes of these motions.

(a) Sup. Ct. R. 6.

(b) For other grounds, see Form No. 695.

No. 695.

Various Grounds of Motions to Dismiss Appeal. (c)

(See Form No. 694.)

For Lack of Jurisdiction. (a)

Because it appears from the affidavits and testimony on file in this suit that the property to which said suit relates is worth less than $5,000.

Hilton v. Dickinson, 108 U. S. 165.

Or: Because the amount in controversy between the parties to the above-entitled cause does not amount to $5,000.

New Orleans Nat. Bk. Assn. v. New Orleans Mut. Ins. Assn., 102 U. S. 121.

Or: That the interests of each of the parties appellant in this cause are separate and distinct, and do not involve an amount sufficient to give this Court jurisdiction.

Wheeler v. Cloyd, 134 U. S. 537.

Failure of Appellant to Perfect Appeal. (b)

Because the transcript of the record in this cause was not docketed in this Court at the term thereof

next after the time when the appeal was prayed and allowed, and that no citation was issued on said appeal.

Or: Because the bond on this appeal was not approved by the Judge of the Court in which said cause was tried and because the names of the sureties to said bond are not inserted therein.

Freeman v. Clay, 48 Fed. Rep. 849.

That Suit is Fictitious. (d)

Because the appellant is the only party on the record who has any interest in this cause, and is conducting this appeal on both sides, and because other parties not named in the record will suffer by the decree which the said appellant may procure to be made by or in consequence of this appeal unless dismissed.

Cleveland v. Chamberlain, 1 Black, 419.

(a) Foster's Fed. Proc., sec. 489.

(b) Richardson v. Green, 130 U. S. 104; Sup. Ct. R. 9; Foster's Fed. Proc., sec. 489.

(c) See, also, dismissals under Sup. Ct. R. 15, 16, 18, 19; C. C. App. R. 19, 20, 21, 22, 23.

(d) Foster's Fed. Proc., sec. 489.

No. 696.

Notice of Submission of Motion to Dismiss or Affirm. (a)

In the Supreme Court, etc.

To Messrs. ————, Counsel for Appellants.

Please take notice that on the —— day, the —— day of ———, 18—, at the opening of the Court, or as soon thereafter as counsel can be heard, the mo-

tions, of which the foregoing are copies, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Annexed hereto is a copy of the brief of argument to be submitted with the said motions in support thereof.

————,

Counsel for the Appellee for the purposes of the motions.

(a) Sup. Ct. R. 6; C. C. App. R. 21.

No. 697.

Assignment of Errors. (a)

In the Supreme Court, etc.

Term, 18—.

No. ——.

[Title of Cause.]

Afterward, to wit, on the first Monday of ———, in this same term, before the Justices of the Supreme Court of the United States, in the city of Washington, comes the said A B (appellant) by ————, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the declaration aforesaid and the matters therein contained are not sufficient in law for the said X Y to have or maintain his action aforesaid against the said A B, there is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid given was given for the said X Y against the said A B. Whereas, by the law of the land the said judgment ought to have been given for the said A B, against the said X Y, and the said A B prays

the judgment aforesaid may be reversed, annulled, and held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment.

_____,

Counsel for Plaintiff.

(a) Sup. Ct. R. 35.

No. 698.

Joinder in Error. (a)

In the Supreme Court, etc.

[Title of Cause.]

And afterward, to wit, on the first Monday of _____, in the _____ term, in the year of our Lord, 18—, the said X Y, by his attorney, comes here into Court and says that there is no error either in the record and proceedings aforesaid or in the giving of the judgment aforesaid, and he prays that the said supreme court of the United States before the Justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form as aforesaid given, may be in all things affirmed, etc.

_____,

Attorney for Defendant.

(a) Sup. Ct. R. 35.

No. 699.

Judgment Error to State Court. (a)

In the Supreme Court, etc.

[Title of Cause.]

In error to the Supreme Court of the State of _____.

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of ————, and was argued by counsel.

On consideration whereof it is now ordered and adjudged by this Court that the decision of the said Supreme Court in this cause be, and the same is hereby [as the case may be].

(a) Desty's Fed. Proc., sec. 213.

No. 700.

Certificate by Clerk under Rule 9 of Supreme Court Rules.

[Title of Court and Cause.]

United States of America, ———— Circuit, City of ————. } ss.

I, ————, Clerk of the United States Circuit Court of Appeals for the ——— Circuit, do hereby certify that on the —— day of ———, an order was entered herein by the Circuit Court of Appeals for the ——— Circuit, directing a mandate to issue to the Circuit Court of the United States for the ——— District, reversing a judgment of said Circuit Court entered in the clerk's office of said Court on the —— day of ———, 18—, and that on the —— day of ———, 18—, a writ of error for the review of said order by the Supreme Court of the United States was duly sued out by X Y, the above-named defendant and allowed by ————, Circuit Judge, and issued from the clerk's office of the United States Court of Appeals for the ——— Circuit; which writ of error was returnable in the Supreme Court of the United

States on ———, 18—, that on or about the same day a bond as security for costs upon said writ of error and a citation for the said return day were duly approved and signed by the said circuit judge, which writ of error, citation, and bond were duly served on the attorney for the defendant in error on the —— day of ———, 18—.

In testimony whereof, I have caused the seal of said Court to be hereunto affixed at the city of ————, in the ——— Circuit, this —— day of ———, 18—.

————,
Clerk.

No. 701.

Certificate of Questions by Circuit Judges to the Supreme Court. (a)

The United States Circuit Court of Appeals for the ——— Circuit

[Title of Cause.]

Appeal from the Circuit Court of the United States for the ——— District of ————.

This cause coming on for hearing before the Court, after full argument, it is ordered, in view of the important questions arising upon the record and the doubt which the Court has as to the correct decision thereof, that ——— questions arising on said appeal shall be certified in the Supreme Court of the United States for its instruction thereon, and that accompanying said questions there shall also be certified a statement from which such questions can be understood; which statement and questions are as follows [statement and questions to follow].

[To be signed by all the Judges.]

(a) Sup. Ct. R. 37; Desty's Fed. Proc., sec. 177.

No. 702.

Petition for Writ of Certiorari. (a)

In the Supreme Court of the United States.

Term ——, 18—,

Ex parte A B,
Petitioner.

Petition for writ of certiorari requiring the Circuit Court of Appeals for the ——— Circuit to certify to the Supreme Court, for its review and determination, the case of A B appellant, v. X Y, respondent.

To the Honorable the Supreme Court of the United States.

The petition of X Y respectfully shows to this honorable Court as follows [here state the facts and proceedings, in paragraphs numbered, up to and including the judgment of the Circuit Court of Appeals].

A certified copy of the entire record of the said case in the said Circuit Court of Appeals is herewith furnished as part of this application in conformity with rule 37 of this honorable Court relative to cases from Circuit Court of Appeals, and the same is marked Exhibit "A."

Your petitioner is advised and believes that the said judgment of the said United States Circuit Court of Appeals in said case is erroneous, and that this honorable Court should require the said case to be certified to it for its review and determination under and in conformity with the provisions of the sixth section of the act of Congress, entitled "An act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes, approved March 3, 1891, the said case being made

final in the said Circuit Court of Appeals by the said act.

The said case was decided in the said Circuit Court of Appeals [here state the arguments against the decision of the Circuit Court of Appeals and the reasons why it should be reviewed by the supreme court and conclude.]

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the ——— Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of (b) the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled A B, appellant, v. X Y, respondent, No. ——, to the end that the said case may be reviewed and determined by this Court as provided in section 6 of the act of Congress, entitled "An act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this honorable Court.

And your petitioner, etc.

[Verification.]

(a) Sup. Ct. R. 37; Desty's Fed. Proc., secs. 177, 178.

No. 703.

Prayer of Petition for Certiorari for Diminution of the Record. (a)

[To come in at (b) in Form No. 702.]

All and every part of the record and proceedings of the said ——— Court of ————, in the said case therein entitled A B, appellant v. X Y, respondent, No. ——, remaining on file in the office of the clerk of the said Court, and not embodied in the transcript on appeal in the said cause already filed in this court [or, constituting the —— (specify what parts of the omitted record are to be brought up)].

See Missouri K. & T. Ry. Co. v. Dinsmore, 108 U. S. 30.

(a) Sup. Ct. R. 14; C. C. App. R. 18.

No. 704.

Order on Petition for Writ of Certiorari. (a)

In the Supreme Court, etc.

[Title of Cause.]

On a petition for a writ of certiorari to the United States Circuit Court of Appeals for the ——— Circuit.

On consideration of the petition for a writ of certiorari herein to the United States Circuit Court of Appeals for the ——— Circuit, and of the argument of counsel thereon had, as well in support of as against the same, it is now hereby ordered by the Court that the said petition is hereby [as the case may be].

(a) Desty's Fed. Proc., sec. 177, 178; Sup. Ct. R. 37.

No. 705.

Writ of Certiorari.

THE UNITED STATES OF AMERICA.—ss.

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the ——— Circuit, Greeting:

Being informed that there is now pending before you a suit in which A B is plaintiff in error (or appellant), and X Y is defendant in error (or appellee), which suit was removed into said Circuit Court of Appeals by virtue of a writ of error to (or appeal from) the District (or Circuit) Court of the United States for the District of ———; and we being willing, for certain reasons, that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said supreme court, as aforesaid, the record and proceedings in said cause, so that the said supreme court may act thereon as of right and according to law ought to be done.

Witness, etc.

Section X.

MISCELLANEOUS.

No. 706.

Order Extending Time to Sue Out and Serve Writ of Error.

[Title of Court and Cause.]

Now, at this day, on stipulation filed herein, and on motion of Mr. ————, of counsel for the de-

fendant, it is ordered that the time heretofore allowed said defendant in which to sue out and serve its writ or error, to file its supersedeas bond, to secure the issuance and service of citation, and to otherwise perfect its proceedings in error herein, be, and it is hereby, extended ten days from and after —— day, ———, 18—.

No. 707.

Order Extending Time to File Writ of Error.

[Title of Court and Cause.]

Now at this day, on motion of Mr. ————, of counsel for the defendant, it is ordered that the hearing of this cause upon the motion for a new trial herein be, and the same is hereby, set for ———, 18—.

And it is further ordered that said defendant be, and he is hereby, allowed until ———, the —— day of ——, 18—, in which to file his writ of error and supersedeas bond herein.

No. 708.

Waiver of Joinder on Appeal.

[Title of Court and Cause.]

District of Washington,
State of Washington, } ss.
County of King.

We, the undersigned, solicitors of record in the above-entitled cause for the defendants V W, X Y, and Z, do consent that complainant A B, appeal to the Circuit Court of Appeals of the United States for the ——— Circuit from the decree rendered in

his cause on the —— day of ———, 18—, without joinder, of each or all of us in said appeal, and that we do waive further notice thereof, and authorize the Judge or Court to allow an appeal to be taken separately by said A B.

———.

———.

Solicitors of Record for Defendants, V W, X Y, and Z.

(a) Desty's Fed. Proc., sec. 530.

No. 709.

Stipulation as to Making up of Record. (a)

[Title of Court and Cause.]

It is hereby stipulated between the plaintiff, by her attorneys, and the defendant by its attorney, that the transcript of the record on the writ of error in the above-entitled cause shall be made up of the following papers:

Complaint, Answer, Demurrer to Answer, and Ruling thereon, Reply, Defendant's Demand for Bill of Particulars of Reply, Plaintiff's Bill of Particulars of Reply, Defendant's Demurrer to the Reply, and Ruling of the Court thereon, Amended Reply, and Defendant's Demurrer thereto and Order of Court thereon, Verdicts, both General and Special, Motion for a New Trial, and Order of Court thereon, Judgment, two Orders Extending the Time for Preparing and Filing Bill of Exceptions, Notice of Filing Bill of Exceptions and Admission of Service, Order Settling Bill of Exceptions, Bill of Exceptions, Petition for Order Allowing Writ of Error, Bond on Writ of Error, Writ of Error, Citation and Admission of Service.

It is stipulated that this cause was duly and regularly removed by appropriate and regular proceeding from the Superior Court of ———— county, State of ————, to the above-entitled court, and that all the papers appertaining to said removal may be omitted from the certified record.

————,
Attorneys for Plaintiff.

————,
Attorney for Defendant.

a) Desty's Fed. Proc., sec. 211, 530; Sup. Ct. R. 8; C. C. App. R. 14.

No. 710.

Stipulation as to Printing of Record. (a)

[Title of Court and Cause.]

It is hereby stipulated between the plaintiff in error, by its attorney, and the defendant in error, by her attorneys, that in printing the record in the above-entitled cause, the clerk shall omit therefrom the following documents and papers:

All the papers showing the removal of this cause from the Superior Court of ———— county, ————, to the Circuit Court of the United States, for the District of ————, being pages 3 and 4 and 10 to 17, inclusive, of the certified record; praecipe for appearance on behalf of the defendant found at page 34 of the certified record, Exhibit "A," being the policy of insurance attached to plaintiff's complaint herein, and found at page 8 of the certified record; Exhibit "A" attached to the defendant's answer herein, being the application signed by ————, and found at page 28 of the certified record; copy of insurance policy issued by the defendant company to

————, and marked Exhibit "B" of defendant's answer, and found at page 29 of the certified record; copy of insurance policy issued by the ———— Company to ————, and marked Exhibit "C" of defendant's answer herein, and found at pages 30, 31, and 32 of the certified record herein; copy of the renewal receipt of said policy of insurance, and marked Exhibit "D" of the defendant's answer herein, and found at page 32 of the original certified record; also bond of plaintiff in error herein in the ordinary form and condition according to statute, and approved by the Court, and found at pages 233, 234, 235 of the certified record herein.

It is further stipulated that the documents and papers above mentioned to be omitted from the printed record shall be preserved by the Clerk, and may be referred to by counsel or the Court, if deemed necessary, during the course of the argument, or otherwise during the disposition of the cause.

It is further stipulated between the parties hereto that the papers hereinabove described as Exhibit "A" of plaintiff's complaint and "B" of defendant's answer appear in the bill of exceptions as plaintiff's Exhibit "A," and the defendant's exhibit described as "A" of defendant's answer appears in the bill of exceptions as defendant's Exhibit "1," and the paper described as Exhibit "C" of defendant's answer appears as defendant's Exhibit "9" in the bill of exceptions, and Exhibit "D" of defendant's answer appears as defendant's Exhibit "9A" in the bill of exceptions.

It is also further stipulated that this case was removed from the Superior Court of ———— county, ————, by regular and appropriate proceedings

for that purpose and certified transcript filed in the court below.

————,

Attorney for Plaintiff in Error.

————,

Attorney for Defendant in Error.

(a) Desty's Fed. Proc., sec. 211, 530; Sup. Ct. R. 10, 13, 31; C. C. App. R. 23, 26.

No. 711.

Stipulation as to Printing of Record. (a)

(Another Form.)

[Title of Court and Cause.]

It is hereby stipulated and agreed that the following parts of the record transmitted from the District Court of the United States for the ——— District of ————, be printed for consideration of this Court on appeal.

Pages A to L, inclusive.

Page 7.

Pages 10 and 11.

Page 15 to "No, sir," on page 138.

"J. E. Driscoll," on page 146, to "Yes, sir," on line 5, page 184.

Line 24 on page 184, to line 14 on page 189.

Line 13 on page 190, to and including line 6 on page 192.

Line 8 on page 195, to and including line 14 on page 199.

Line 27 on page 200, to and including line 15 on page 203.

Line 26 on page 203, to and including line 21 on page 204.

Line 15 on page 209, to and including line 11 on page 227.

Pages 228 to 265, inclusive.

Pages 270 to 340, inclusive.

Pages 343 to 411, inclusive.

Page 414 to the end.

Omit title of court and cause in full on all papers excepting the first page, and insert in the place and stead thereof "Title of Court and Cause."

Dated ————, 18—.

H. W. HUTTON,
Proctor for Libelant and Appellant.

SHORTRIDGE, BEATTY & BRITTAIN,
Proctors for Defendant and Appellee.

(a) Notes to Form No. 710.

No. 712.

Order Extending Time to File Transcript of Record and Amend Bill of Exceptions. (a)

[Title of Court and Cause.]

Now, at this day, comes the plaintiff, by Mr. ————, of counsel, and the defendant by Mr. ————, of counsel, and thereupon this cause comes on to be heard upon the motion of said defendant for the extension of time in which to file the transcript herein in the United States Circuit Court of Appeals for the ——— Circuit, and also upon the objections of said plaintiff to the bill of exceptions of the defendant, and, after argument by counsel, it is ordered that the time heretofore granted in which to file said transcript in said United States Circuit Court of Appeals for the ——— Circuit, be, and the same is hereby, extended to ———. 18—.

And it is further ordered that said defendant, X Y, appellants herein, amend their bill of exceptions herein, so as to include therein the entire record of the trial, and that it is hereby allowed twenty days further time, from this date, in which to complete its said bill of exceptions.

————,
Judge.

(a) Sup. Ct. R. 9; C. C. App. R. 16.

No. 713.

Praecipe for Transcript.

[Title of Court and Cause.]

To the Clerk of the above-entitled Court.

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the ——— Judicial Circuit, under the appeal heretofore perfected to said court and include in said transcript the following pleadings, proceedings, and papers on file, to wit: (state papers.)

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the ——— Circuit and on file in the office of the clerk of the said Circuit Court of Appeals at ————, before ———, 18—.

————,
Sollcitor for Appellant.

No. 714.

Clerk's Certificate to Transcript. (a)

[Title of Court and Cause.]

I, W. J. Costigan, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing four hundred and eighty-seven written and printed pages, numbered from 1 to 487, inclusive, to be a full, true, and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $287.20-100, and that said amount was paid by Wheaton, Kalloch & Kierce, attorneys for plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this fifteenth day of July, A. D. 1896.

[Seal] W. J. COSTIGAN,
Clerk United States Circuit Court, Northern District of California.

(a) Sup. Ct. R. 8; C. C. App. R. 14.

No. 715.

Order to Send up Original Exhibits. (a)

[Title of Court and Cause.]

On motion of ———— and ————, attorneys for defendant:

It is ordered that in addition to the transcript of the record on appeal in this action, that the clerk of this Court transmit to the clerk of the United States Circuit Court of Appeals at ————, the following original papers in this action, to be by him safely kept and returned to this Court upon the final determination of this action in said Court of Appeals, namely: Stipulation to take the deposition of ———— and ————, together with the interrogatories and cross-interrogatories thereto annexed; and also

The deposition of said ———— and ————, together with the defendant's Exhibit "A" thereto attached, and also plaintiff's Exhibit "A."

Dated this —— day of ———, 18—.

————,
Judge.

(a) Sup. Ct. R. 8: C. C. App. R. 14.

No. 716.

Petition for Rehearing. (a)

[Title of Court (Circuit Court of Appeals) and Cause.]

Having carefully examined the opinion of the Honorable Court, we think that, with propriety, we may ask the Court to consider whether this case be not one in which it will be proper to grant a rehearing to the appellee on the ground that:

1. The schooner "Robert and Minnie" did not at any time after she sailed from San Francisco on the voyage mentioned in the agreed statement of facts, and up to the time when she was stranded and wrecked, use either a "port or place" within the true interpretation of either of these words as employed in the policy.

It is unnecessary to restate the facts of the case, as they sufficiently appear in the opinion of the Court, in which, as we understand, it is held that when the vessel was navigated up to the buoy located a quarter of a mile from the bar near the entrance of the Suislaw river, she was, under the facts of the case, using a prohibited place, and also that when, not being impelled thereto by stress of weather, she was anchored at a point a mile to the southward of the buoy, she was also using a prohibited place.

If these places, or either of them, be within the meaning of the word "places" as used in the policy, then, of course, there was a breach of the warranty not to use them, and the purpose and intent of using them, except in case of stress of weather, is immaterial. If, on the other hand, they were not prohibited places, then the intent with which they were used cannot make them such.

Now, did the shipmaster, in sailing up to the buoy, which was located in the open sea entirely outside of the Suislaw river, and the approaches thereto, intending to enter the river, in case the services of a tug could be procured to tow him over the bar into the river, or in anchoring the vessel a mile to the southward of this buoy, use a prohibited place within the true interpretation of that word as employed in the policy? We submit that the answer should be in the negative.

When the master sailed the vessel to the place where the buoy was located, and when he anchored the vessel a mile to the southward of this buoy, he was unquestionably using a place within the abstract meaning of this word, and this would be true of any point in the open ocean or on the open coast. The vessel would then, of necessity, be in a place, that is, in a determined portion of space occupied temporarily or otherwise by it.

Now, the meaning of the word "place" is extremely indefinite. It may be a house or a building, or it may be a much more extended area of space. Therefore, the meaning of this word is usually determined by some other word prefixed or annexed thereto, as a "place of business," a "place of abode," and the like. In the contract under consideration, no such qualifying words are employed.

To ascertain, therefore, the meaning of the word "place," as employed in this policy, resort must be had to the context of the instrument, especially to that part of it with which this word is immediately associated. The phrase is "port or place." These words, we submit, should be interpreted ejusdem generis, or as words conveying the same general idea; that is, that the word "place," as here used, means substantially and for practical purposes the same as "port," and the parties to this contract so intended.

Now, the word "port" has a legal and also a commercial meaning, the latter frequently differing from the former. In its legal sense it imports, inter alia, some place designated by a statute or municipal regulation for revenue or for pilotage purposes. In such case it may be termed a fiscal port. In this sense it may include a more extended territory than when used in its commercial sense, in charter parties, bills of lading or policies of marine insurance—that is, a place where ships can safely load or discharge cargoes, or to which they resort for protection from sea perils.

Sailing ship "Garston" Co. v. Hickie & Co., L. R. 15 Q. B. Div. 580.

Price & Co. v. Livingston et al., L. R. 9 Q. B. Div. 679.

Dock Co. etc. v. Brown et al., 2 Barn. & Adol. 43.

That the parties to this contract of insurance in employing in it the words "ports or places" intended some similarity between the two, is, we think, strengthened by other parts of the policy.

Now, when it prohibits, as it does, the use of ports or places except "Umpqua and Columbia Rivers, Humboldt, Coos and Shoalwater Bays, Gray's Harbor, Sitka, Ounalaska and St. Paul's Harbor, and ports inside of the mouth of the Straits of Fuca," it defines, by name, well-known ports and places to which vessels resort, and to which the "Robert and Minnie" was permitted to resort, for the purpose of trade and commerce, and in forbidding the vessel to use certain other ports or places, was it not intended to forbid the use of ports and places similar to those the use of which was permitted, though forbidding their use on account of the danger of using them, and not intended to cover an indefinite, undefined point in the open ocean, which, in the very nature of things, never was and never could be used for lading and unlading cargoes, or to which resort could be had as a place of safety, and which in the course of legitimate voyages, the vessel might of necessity use, though not impelled thereto by stress of weather?

Again, we think the foregoing view is strengthened by a consideration of the liberty clause, which is as follows:

"It shall and may be lawful, however, for said vessel on her voyages, to proceed and sail to, touch and stay at, any ports or places if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance."

This provision was introduced for the benefit of the insurer as well as of the insured. It was in the interest of the former to allow the insured vessel, in case of disaster or impending disaster, to seek a

place of safety; therefore, permission was given that the vessel, in such case, might proceed to, touch and stay at, any prohibited ports or places for the purpose of protection or safety.

Now, does not this word "place," in this connection, indicate some point in the nature of a port and not a point in the open sea, which would be anything but a place of refuge or safety for a vessel at anchor, as the stranding and destruction of the "Robert and Minnie" abundantly shows?

When the "Robert and Minnie" anchored at a point a mile to the southward of the buoy, she was impelled thereto by "stress of weather." The wind had died out, leaving her helplessly drifting toward the shore. The dying out of the wind was as much a stress of weather as a storm or a gale, against the happening of either of which nautical skill could not avail.

Finally, we respectfully suggest that the Court again consider the point taken in our brief filed in the case, that it was the use of the Suislaw River that was prohibited, and that the intent to use it was not the equivalent of using it.

Wherefore, upon the foregoing grounds, this appellee and petitioner respectfully prays this Honorable Court to grant to it a rehearing of said cause.

ANDROS & FRANK,

Proctors for Appellee and Petitioner.

I, Milton Andros, of counsel for the appellee herein, do hereby certify that in my judgment the foregoing petition for a rehearing is well-founded, and that the same is not interposed for delay.

MILTON ANDROS.

(a) Sup. Ct. R. 30; C. C. App. R. 29.

No. 717.

Order Dismissing Cause on Motion Filed. (a)

[Title of Court and Cause.]

Error to [or appeal from] the District (or Circuit) Court of the United States for the ———— District of ————.

This cause having been called for hearing in its regular order and a motion by counsel for the plaintiff in error [or appellant or appellee] to dismiss this cause having been filed.*

Therefore, in pursuance of said motion, it is now here ordered, adjudged and decreed by this Court that the writ of error (or appeal) be and the same is hereby dismissed.

(a) Sup. Ct. R. 9; C. C. App. R. 21.

No. 718.

Order Dismissing Case on Call. (a)

(As in form No. 717 to *) and no one appearing for the plaintiff in error (or appellant),

Therefore (as in Form No. 717, adding) at the cost of (the party in default).

(a) Sup. Ct. R. 16, 17, 18; C. C. App. R. 22.

No. 719.

Order Dismissing Cause for Failure to Print. (a)

(As in Form No. 717 to *) and it appearing to the Court that the parties have failed to print the transcript of the record,

It is thereupon, in pursuance of the twenty-third rule of this Court, now here ordered, etc. (as in Form No. 717).

(a) Sup. Ct. R. 10; C. C. App. R. 23.

No. 720.

Order Dismissing Cause under Rule. (a)

[Title of Court and Cause.]

Error to (or appeal from) etc. (Form No. 717).

This cause came on to be heard on the transcript of the record from the District (or Circuit) Court of the United States for the, etc., ————, and the plaintiff in error (or appellant) having been three times solemnly called by the marshal to come into Court and prosecute said writ of error (or appeal), and failing to appear,

It is thereupon, in pursuance of the twenty-second rule of this Court and on the motion of Mr. ————, of counsel for the appellee (or, defendant in error), now here ordered, adjudged and decreed, by this Court that this cause be and the same is hereby dismissed at plaintiffs' (or appellant's) cost; and that this cause be and is hereby remanded to said District (or Circuit) Court to be proceeded in according to law and justice.

(a) Sup. Ct. R. 16; C. C. App. R. 22.

No. 721.

Petition for Summary Judgment Against Sureties on Appeal Bond. (a)

[Title of Court and Cause.]

To the Honorable, etc.

Now comes A. B. and respectfully shows to this honorable Court as follows:

That on the —— day of ———, 18——, this honorable Court entered a decree in the above entitled cause in favor of said libelant and against said steamship "Union" for the sum of $——, together with interest thereon at the rate of seven per cent per annum from the —— day of ———, 18——, and the costs of suit.

That thereafter, on the —— day of ———, 18——, said Court allowed the claimant in said cause an appeal from the said decree to the United States Circuit Court of Appeals for the ———— Circuit.

That thereupon such proceedings were had that on said —— day of ———, 18——, the said claimant duly filed his bond on appeal in this Court in the sum of $——, with M and N as sureties, and, the said cause having been appealed to the said United States Circuit Court of Appeals and having been there duly heard, the said Circuit Court of Appeals affirmed the decree of this honorable Court, with costs to be taxed, and the mandate of said Circuit Court of Appeals was accordingly filed with the clerk of this Court on the —— day of ———, 18——.

That thereafter a writ of venditioni exponas issued in said cause and such proceedings were had that on the —— day of ———, 18——, the said steamship "Union" was sold by the United States marshal under the said writ for the sum of $———, which said money was duly turned into the registry of this

Court. That the amount realized upon the said sale was insufficient to satisfy the said judgment and costs and interest.

That the costs were duly taxed in the sum of $——; that the interest on said judgment up to ——, 18—, amounted to the sum of $——, making a total of interest and costs amounting to $——.

That the stipulators on the bond for costs in said cause have paid the amount of said bond, to wit, the sum of $———, and the said libelant has further received on account of said costs and interest the sum of $———, leaving a balance of $——— due thereon.

Wherefore, this libelant prays this honorable Court that said claimant and the said sureties M and N may be cited to appear and show cause, if any there be, why judgment shall not be summarily entered in said cause against them for the sum of $———, together with the costs of this proceeding, and execution issue thereon.

(Verified.) A B.

ANDROS & FRANK,
Proctors for Libelant.

(a) Desty's Fed. Proc., secs. 436, 533; Foster's Fed. Proc., sec. 487; The Sydney, 47 Fed. Rep. 260; The Belgen Land, 108 U. S. 153.

No. 722.

Order to Appear and Show Cause.

[Title of Court and Cause.]

Upon motion of Messrs. Andros & Frank, proctors for libelant, and good cause being shown therefor, it is hereby ordered that M do appear before this

Court on ——day, the —— day of ———, 18——, at the hour of 10 A. M. of said day, at the courtroom thereof in (locality), in the City and County of ———, State of ———, then and there to show cause, if any there be, why summary judgment shall not be entered in the above entitled cause against him for the sum of $———, together with the costs of this proceeding, and execution issue thereon.

Dated ———, 18——.

———,
Judge.

No. 723.

Decree after Mandate of Affirmation.

[Title of Court and Cause.]

It appearing that a decree was heretofore entered in the above entitled cause in favor of the libelant for the sum of $17,097.68, together with interest thereon at the rate of seven per cent per annum from the —— day of ———, 18——, with costs of suit; and the said cause was thereafter appealed to the Circuit Court of Appeals in and for the ——— Circuit, upon which appeal the said claimant filed an appeal bond in the penal sum of $2,250, with Mr. M. N. as one of the sureties thereon.

And it appearing that the said decree of the District Court was thereafter affirmed by the Circuit Court of Appeals and the said vessel having been sold under the writ of venditioni exponas issuing thereunder, brought a sum insufficient to satisfy said decree;

And it appearing that the costs and interest in said cause amounted to the sum of $2,780.40, whereof libelant has received on account the sum of $1,625;

And it appearing that the said M. N. was duly cited to appear and show cause why summary judgment should not be entered against him for the sum of $1,125, together with the costs of this proceeding, and the said matter having been brought on for hearing on said order to show cause,

It is now ordered, adjudged and decreed that a summary judgment be and the same is entered against the said M. N., and in favor of said libelant, for the sum of $1,125, together with the costs of this proceeding, and that the said libelant have execution thereof.

Dated ————.

————,

Judge.

CHAPTER VIII.

INTERSTATE COMMERCE.

No. 724.

Indictment of President of Railroad Corporation for Breach of the Interstate Commerce Act.

In the District Court of the United States, in and for the Northern District of California.

At a stated term of said Court begun and holden at the City and County of San Francisco, within and for the Northern District of California, on the first Monday in February, in the year of our Lord, 1895.

The grand jurors of the United States of America, within and for the District aforesaid, on their oath present:

That Collis P. Huntington, late of the Northern District of California, heretofore, to wit, on or about the tenth day of January, A. D. 1894, within the jurisdiction of the United States aforesaid and the District Court aforesaid, he, the said Collis P. Huntington, being then and there an officer of a certain corporation known as the Southern Pacific Company, which at all times mentioned therein was a railroad corporation duly organized and existing under the laws of the State of Kentucky, engaged in the business of a common carrier of freight and passengers within the meaning of an Act of the Congress of the United States, entitled an "Act to Regulate Commerce," approved February 4, 1887, and the Act of

Congress amendatory thereof approved March 2, 1889, over and upon a line of railway from the city and county of San Francisco, State of California, by the way of Los Angeles, in said State, to New Orleans, in the State of Louisiana, over and upon a line of railway from the city and county of San Francisco, in the State of California, by the way of the town of Red Bluff, in the State of California, and to the town of Ashland, in the State of Oregon, to Portland, in the State of Oregon, and over and upon a line of railway from the city and county of San Francisco, State of California, over and through the State of Nevada, to the city of Ogden, in the State of Utah, and over and upon other lines of railroad in the said State of California and Northern District thereof subsidiary to the said line of railroad of the said Southern Pacific Company, railroad corporation as aforesaid, connecting at suitable points of junction with said lines, and forming therewith routes of transportation for the above and before mentioned and described interstate commerce, and operated and used upon said lines of railway last above mentioned and described and the necessary yards, depots, tracks, trains, cars, and other equipments suitable for the transportation of freight and passengers from points within the State of California to points within other States and foreign countries.

That at all the times and days mentioned herein the said Collis P. Huntington held in said corporation the office of President thereof.

That at all the times and days mentioned herein the said Southern Pacific Company was a common carrier, then and there engaged in the transportation of passengers and property partly by railroad and partly by water, under a common control, management, and arrangement for the continuous carriage

and shipment from the several terminal and other stations upon its said lines of railroad within the State of California, as aforesaid, to the several terminal and other stations upon its said lines of railroad in the State of Oregon, and in the States of Nevada, Texas, and Louisiana, and the territories of Utah, Arizona, and New Mexico, and including the transportation of passengers and property from the city of San Francisco, in the State of California, by water, to the city of Oakland, in said last-mentioned State, and thence by railroad to the town or city of Ashland, in the State of Oregon, and passing through the town of Red Bluff, in the State of California.

That at the said time hereinbefore mentioned, to wit, on or about the tenth day of January, 1894, the said Collis P. Huntington, while he was then and there acting as an officer of said corporation, to wit, as said president of said Southern Pacific Company, did then and there, in the said State and Northern District of California, unlawfully, willfully, and knowingly make and give an undue and unreasonable preference and advantage to a particular person, viz., to one Frank M. Stone, residing then and there in the city and county of San Francisco and State of California, in this, to wit, that he, the said Collis P. Huntington, acting as president of said corporation as aforesaid, did in the State and Northern District of California, make and execute a certain instrument in writing, commonly known and described as "a railroad pass" or "free pass," in words and figures as follows, to wit:

"Southern Pacific Company.

"Pass Frank M. Stone over lines of Southern Pacific Company, 1894, until December 31st, unless otherwise ordered.

"C. P. HUNTINGTON."

That on or about the tenth day of January, 1894, as aforesaid, and at the said city and county of San Francisco, State and Northern District of California, the said Collis P. Huntington did then and there deliver and cause to be delivered to the said Frank M. Stone the said instrument in writing, to wit, the said "free pass," and that the same remained in the custody, possession, and control of the said Frank M. Stone until and including the sixth day of December, 1894, and during all that period was in full force and effect.

That it was the intent of the said Collis P. Huntington, when he so unlawfully, willfully, and knowingly issued, made, executed, gave and delivered, and caused to be delivered, to the said Frank M. Stone the said instrument in writing, pass and "free pass" as aforesaid, that he, the said Frank M. Stone, should have and did have granted, given, and made to him, the said Frank M. Stone, by and through the said Collis P. Huntington, as president and officer of the said Southern Pacific Company, a railroad corporation as aforesaid, a full and unlimited privilege and opportunity to travel without charge or compensation for the transportation then and there of him, the said Frank M. Stone, over and upon all of the said lines of railroad of the Southern Pacific Company, a railroad corporation as aforesaid, used and operated by the said Southern Pacific Company, in its capacity and in its transactions as a common carrier, as aforesaid, which said full and unlimited privilege and opportunity to travel as aforesaid was then and there, and now is, an undue and unreasonable preference and advantage; the said Collis P. Huntington, as president of the Southern Pacific Company, a railroad corporation as aforesaid, then and there and thereby did unlawfully, willfully, and knowingly intend that he,

the said Frank M. Stone, to whom the said "free pass" and instrument in writing was so given and made as aforesaid, could, whenever thereafter he should be minded so to do, travel and be transported free of charge and compensation over all of the lines of said road of the said Southern Pacific Company, a corporation as aforesaid, which said lines of railroad ran from the city and county of San Francisco, by the way of Los Angeles, in the State of California, over and through the territories of Arizona and New Mexico, and the States of Texas and Louisiana, to the city of New Orleans in said last-mentioned State, and which ran from the city and county of San Francisco, in the State of California, by water to the city of Oakland, in said State, and through and over the said State of California, by the way of Red Bluff, in said State, to the town of Ashland, in the State of Oregon, and thence through said State of Oregon to the city of Portland, and which ran from the city and county of San Francisco, in the State of California, over and through the States of California and Nevada and the territory of Utah, to the city of Ogden, in the last-mentioned territory as aforesaid.

And the grand jurors aforesaid, on their oath aforesaid, do further say:

That the said Frank M. Stone, to whom this said undue and unreasonable preference and advantage as aforesaid was thus given and made by him, the said Collis P. Huntington, president as aforesaid, was not then and there a destitute or homeless person, transported or to be transported by a charitable society or societies, and was not then and there a necessary agent of such society or societies employed or to be employed in such transportation; nor was the giving and making of such undue and unreasonable preference and advantage then and there the giving

and making a reduced rate or rates to a minister of religion, the said Frank M. Stone not being then and there a minister of religion, nor was the giving and making of said undue and unreasonable preference and advantage then and there the giving and making of a reduced rate or rates to a municipal government or governments for the transportation of an indigent person or of indigent persons, the said Frank M. Stone being then and there a private person, and not an officer or agent of any such government or governments, nor was the giving and making of said undue and unreasonable preference and advantage then and there the giving and making of a reduced rate or rates to an inmate or inmates of the National home or homes or a State home or homes for disabled volunteer soldiers, nor of a soldier's or sailor's orphan home or homes, including those or any about to enter and those or any returning home after discharge under arrangement or arrangements with a board or boards of managers of said home or homes, the said Frank M. Stone not then and there being or having been an inmate of any such home or homes; nor was the giving and making of said undue or unreasonable preference an advantage then and there an exchange of a pass or passes or of a ticket or tickets with any other railroad company other than the said Southern Pacific Company for the officer or officers, employee, or employees of said other railroad company, the said Frank M. Stone not then and there being an officer or employee of any railroad company as aforesaid.

Against the peace, etc.

HENRY L. FOOTE,
United States attorney.

CHAPTER IX.

SUPREME COURT—PREROGATIVE WRITS.

No. 725.

Mandamus. (a)

UNITED STATES OF AMERICA.

To the Honorable ————, Judge of the District Court of the United States for the ———— District of ————.

Whereas, one Martha Bradstreet hath heretofore commenced and prosecuted in your Court certain real actions or writs of right in your Court lately pending between said Martha Bradstreet, demandant, and the following named tenants severally and respectively, to wit [naming them]:

And whereas, heretofore, to wit, at a session of the Supreme Court of the United States held at Washington, on the —— day of ———, 18——, it appeared, among other things, that at a session of your said Court lately before holden by you according to law, all and singular the said writs of right then pending before your said Court, upon the motions of the tenants aforesaid, were dismissed, for the reasons that there was no averment of the pecuniary value of the lands demanded by the said demandant in the several counts filed and exhibited by the said demandant against the several tenants as aforesaid, which orders of your said Court so dismissing the said actions were against the will and consent of said demandant; whereupon, said Supreme Court, at the instance of said demandant, granted a rule requiring you to show

cause, if any you had, among other things, why a writ of mandamus from the said Supreme Court should not be awarded and issued to you, commanding you to reinstate and proceed to try and adjudge, according to the law and the right of the case, the several writs of right aforesaid and the mises therein joined. And whereas, at the late session of the said Supreme Court held at Washington, on the second Monday of January, in the year 1853, you certified and returned to the said Supreme Court, together with said rule that after the mises had been joined in the several causes mentioned in said rule, motions were made therein on the part of the tenants that the same should be dismissed, upon the ground that the counts respectively contained no allegation of the value of the matter in dispute, and that it did not therefore appear from the pleadings that the causes were within the jurisdiction of the Court; that in conformity with what appeared to have been the uniform language of the National Courts upon the question, and your own views of the law, and in accordance especially with several decisions in the Circuit Court for the Third Circuit (4 Wash. C. C. R. 482-624), you granted their motions, and assuming that the causes were rightfully dismissed, it follows of course that you ought not to be required to reinstate them unless leave ought also to be granted to the demandant to amend her counts; and whereas, afterward, to wit, at the same session of the Supreme Court last aforesaid, upon consideration of your said return and of the cause shown by you against the said rule being made absolute and against the awarding and issuing of the said writ of mandamus, and upon consideration of the argument of counsel as well on your behalf, showing cause as aforesaid as on behalf of said demandant in support of said rule, it was considered by said

Supreme Court that you had certified and returned to the Supreme Court an insufficient cause for having dismissed said actions, and against the awarding and issuing of the said writ of mandamus pursuant to the rule aforesaid; the said Supreme Court being of opinion and having determined on the matter aforesaid that in cases where the demand is not made for money, and the nature of the action does not require the value of the things demanded to be stated in the declaration, the practice of the said Supreme Court and of the courts of the United States is to allow the value to be given in evidence either at or before the trial of the cause, and would have a right to give it in evidence in said Supreme Court; consequently, she cannot be legally prevented from bringing her cases before the said Supreme Court; and it was also then and there considered by the said Supreme Court that the peremptory writ of the United States issue, requiring you, the said Judge of the said District Court, to reinstate and proceed to try and adjudge, according to the law and the right of the case, the several writs of right and the mises therein joined lately pending in your said Court between the said Martha Bradstreet, demandant, and Apollos Cooper and others, the tenants aforesaid, defendants. Therefore, you are hereby commanded and enjoined that immediately after the receipt of this writ, and without delay, you reinstate and proceed to try and adjudge, according to the law and the right of the case, the several writs of right and the mises joined therein lately pending in your said Court between the said Martha Bradstreet, demandant, and the said Apollos Cooper and others, the tenants hereinabove named, so that complaint be not again made to the said Supreme Court, and that you certify perfect obedience and due execution of this writ to the said Su-

preme Court to be held on the first Monday in August next. Thereof, fail not at your peril, and have then and there this writ.

Witness, the Honorable JOHN MARSHALL, Chief Justice of the said Supreme Court, the second Monday of January, A. D. 1833.

W. T. CARROLL,
Clerk Supreme Court of the United States.

(a) From Ex parte Bradstreet, 7 Pet. 634; Desty's Fed. Proc., sec. 203.

No. 726.

Prohibition. (a)

Rule to Show Cause why Writ of Prohibition Should not Issue.

[Title of Court and Cause.]

On consideration of the petition of ————, late collector of customs of the port of ————:

It is now here ordered by the Court that cause be shown by the Judge of the District Court of the United States for the ———— District of ————, before this Court, at Washington, on the —— day of ——— next, at 12 o'clock noon of that day, or as soon thereafter as counsel can be heard, why a writ of prohibition should not be granted as prayed in said petition.

Dated ———, 18—.

(a) Rev. Stats. U. S., sec. 688; Desty's Fed. Proc., sec. 203.

No. 727.

Return of District Judge.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court.

In compliance with the order to show cause, of which a copy is hereunto annexed, the undersigned Judge of the District Court of the United States for the ——— District of ———, respectfully returns and certifies as follows: [Here set forth the course of proceedings and annex a certified copy of the records and proceedings and papers on file in or relating to the cause].

And thereupon it is respectfully submitted whether or not this Court should take any further proceedings in the said cause.

Witness my hand this —— day of ———, 18—.

A. B.

No. 728.

Writ of Prohibition. (a)

UNITED STATES OF AMERICA.

The President of the United States to the Honorable Richard Peters, Esq., Judge of the District Court of the United States, in and for the Pennsylvania District.

It is shown to the Judges of the Supreme Court of the United States, by Samuel B. Davis, that whereas, by the laws of nations and the treaties subsisting between the United States and the Republic of France, the trial of prizes taken on the high seas without the territorial limits and jurisdiction of the United States,

and brought within the dominions and jurisdiction of the said republic for legal adjudication by vessels of war belonging to the sovereignty of the said republic acting under the same, and of all questions incidental thereto, does of right and exclusively belong to the tribunals and judiciary establishments of the said republic, and to no other tribunal or tribunals, Court or Courts whatsoever [here follows a statement of the circumstances of the case].

Wherefore, the said Samuel B. Davis, the aid of the said Supreme Court most respectfully requesting, hath prayed remedy by a writ of prohibition to be issued out of the said Supreme Court to you to be directed, to prohibit you from holding the plea aforesaid, the premises aforesaid, anywise concerning further before you. You, therefore, are hereby prohibited that you no further hold the plea aforesaid, the premises aforesaid, in anywise touching before you, nor anything in the said District Court attempt nor procure to be done which may be in anywise to the prejudice of the said Samuel B. Davis, or to the said corvette or vessel of war called the "Cassius," or in contempt of the laws of the United States; and also that from all proceedings therein you do, without delay, release the said Samuel B. Davis and the said corvette or vessel of war called the "Cassius" at your peril.

Witness, the Honorable JOHN RUTLEDGE, Esq., Chief Justice of the said Supreme Court, at Philadelphia, this twenty-fourth day of August, A. D. 1795, etc.

I. WAGNER,
Deputy Clerk Supreme Court of the United States.

(a) Desty's Fed. Proc., sec. 203; United States v. Peters, 3 Dall. 121; R. S. U. S., secs. 688-716.

No. 729.

Writ of Certiorari. (a)

THE UNITED STATES OF AMERICA.

The President of the United States of America to the Judges of ————, Greeting:

Whereas, in a certain suit in said ———— Court, in which AB is plaintiff and CD is defendant, which suit was removed by writ of error to the Supreme Court of the United States agreeably to the act of Congress in such case made and provided, certain inaccuracies, defects, and omissions in the record of the proceedings have been suggested, to wit [state them]. You, therefore, are hereby commanded that searching the record and proceedings in said cause you certify forthwith to the said Supreme Court, under your seal, a full, true, and complete transcript of said record and proceedings, plainly and distinctly, and in as full and ample a manner as the same now remain before you, together with this writ; so that the said Supreme Court of the United States may be able thereon to proceed and do what shall appear to them of right ought to be done. Herein fail not.

Witness the Honorable ————, Chief Justice of the said Supreme Court.

————,
Clerk of the Supreme Court.

(a) Supreme Court Rule, 14; Desty's Fed. Proc., secs. 111, 178, 372.

No. 730.

Writ of Injunction. (a)

THE UNITED STATES OF AMERICA.

In the Supreme Court.

The President of the United States of America to Erastus Corning, John F. Winslow, and James Horner:

Whereas, in a certain suit in the Supreme Court of the United States, removed there by the appeal of the complainant from the Circuit Court of the United States for the Northern District of New York, in which latter Court the Troy Iron and Nail Factory was complainant and you were defendants in chancery, the said Supreme Court, by a decree made upon the hearing of the said cause this eighteenth day of January, A. D. 1853, ordered, adjudged, and decreed, among other things, that an injunction should issue under the seal of the said Court to restrain you, the said Erastus Corning, John F. Winslow, and James Horner, and each of you, perpetually from using the improved machinery with the bending lever for making hook or bead-headed spikes, patented to Henry Barden, on the second day of September, A. D. 1840, and assigned to the complainant. It is therefore in execution of said decree hereby firmly enjoined and commanded you, and every of you, that from and immediately after being served with this writ, or notice thereof, you, and every of you, do not use the aforesaid machinery; but that you, and every of you, do from henceforth entirely cease and desist from using the aforesaid improved machinery with the bending lever for making hook and bead-headed spikes patented to Henry Barden, the second day of September, A. D. 1840, and assigned to the com-

plainant, and this you shall in nowise omit, at your peril.

Witness, the Honorable ROGER B. TANEY, Chief Justice of the said Supreme Court, this eighteenth day of January, A. D. 1853.

————,

Clerk of the Supreme Court of the United States.

(a) Desty's Fed. Proc., sec. 239; Rev. Stats. U. S. 719.

No. 731.

Subpoena—Original Jurisdiction. (a)

The President of the United States to the Governor and Attorney General of the State of ————, Greeting:

For certain causes offered before the Supreme Court of the United States, holding jurisdiction in equity, you are hereby commanded and strictly enjoined that, laying all matters aside and notwithstanding any excuse, you personally be and appear on behalf of the people of said State of ———— before said Supreme Court, holding jurisdiction in equity on the first Monday in ——— next at the city of Washington, in the District of Columbia, being the present seat of the National government of the United States, to answer things which shall be then and there objected to said State, and to do further and receive on behalf of said State what the said Supreme Court holding jurisdiction in equity shall have considered in this behalf, and this you may in nowise omit under the penalty of five hundred dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of said Supreme Court, at the city of Washington, this —— day of ———, 18—.

(a) Supreme Court Rule, 5, subsec. 3; New Jersey v. New York, 3 Pet. 467.

INDEX.

INDEX.

NOTE.—The numbers refer to the page.

ACCOUNTING—ACCOUNT, bill against broker 488
bill, patent suit..... 691
decree for 565
plea of account stated..... 522
ACCOUNTS, reference in answer to book of.... 527
refusal of in answer as useless..... 527
stipulation for annexing to depositions..... 756
ACTION AT LAW, bill of exceptions (see Appeals).
(see Chinese Exclusion Act.)
(see Customs.)
(see National Bank.)
(see Patent.)
ADMIRALTY, administrator of deceased libelant, petition by to prosecute.. 310
affidavit on motion for sale of ship as perishable.. 332
affidavit of publication of citation on warrant of arrest of ship..... 237
amendment to libel, order allowing..... 270
amendment to libel, order to file nunc pro tunc.. 263
answer to libel for bottomry..... 203
answer by cross-libel.. 194
answer, decree sustaining exceptions to..... 287
answer, exceptions to..... 322
answer to exceptions..... 321
answer to libel for freight charges..... 207
answer to interrogatories..... 224

ADMIRALTY (Continued).
answer by stipulation to libel on marine insurance.. 220
answer to libel on marine insurance..... 211
answer (the like) 213
answer to libel for personal injuries..... 216
appeal (see Appeals)
appearance, bond for..... 254
appearance, citation for..... 242
appraisement, form of..... 324
appraisement, order for and delivery of perishable goods.. 269
appraisement, order for on petition for limitation of liability..... 275
appraisers, oath of..... 324
appraisers, return by..... 325
arrest of ship, affidavit of publication of citation.. 237
arrest of ship, citation and return to warrant 235
arrest of ship, warrant of..... 234
assignment of error (see Appeal.)
attachment, writ of, of ship, and return..... 238
average, libel in..... 84
bond on appeal (see Appeal)
bond (see Stipulations)
bond for appearance..... 254
bond to obtain release of ship..... 253
bond, bottomry 255
bond, respondentia 257
bottomry, answer to libel 203
bottomry, bond in..... 255
bottomry, libel... 87
breach of contract with passenger, libel in.. 131
caretaker, marshal's costs (see Marshal)
cargo, claim to..... 197
cargo, claim to part of..... 197

ADMIRALTY (Continued).
charter-party, libel on..... 91
charter-party (the like)..... 95
citation, affidavit of publication on warrant of arrest of ship..... 237
citation to appear..... 242
citation to show cause..... 241
citation to show cause, after seizure, against final decree.. 244
citation on appeal (see Appeal)
citation and return to warrant of arrest of ship.. 235
claims by agent of owner..... 198
claims by master for owner..... 199
claims to cargo.. 197
claims to part of cargo.. 197
claims to ship by owner..... 195
claims to ship and cargo..... 196
claims on petition for limitation of liability.. 200
claims, replication and answer to..... 221
claims, stipulation by claimant..... 249
claims, verification of by agent..... 327
claimant, praecipe for appearance of..... 331
claimant, substitution of..... 326
collision, final decree in..... 296
collision, general scheme of libel in..... 109
collision, libel for damages in personam..... 114
collision, libel, steam and sail..... 117
collision, libel, steam and steam..... 110
commencements of libel (see Libel)
conclusions of libel (see Libel)
commissioner, decree confirming report..... 293
commissioner, decree referring to..... 292
commissioner, decree referring to in case of damage 293
commissioner, exceptions to report of..... 323

ADMIRALTY (Continued).
commissioner, order confirming report of and for summary judgment..... 282
commissioner, order for reference to..... 281
commissioner, order sustaining exceptions to report.. 283
commissioner, report of..... 331
condemnation by default, order of..... 266
Consent to include other members of crew in libel of intervention, salvage suit..... 336
consolidation, order for, libel and cross-libel. 286
contract, libels in, viz:
contract, breach of with passenger..... 131
contract, freight charges..... 129
contract (the like).. 126
contract, marine insurance..... 149
contract (the like)..... 151
contract (the like—damage to personal effects) 153
contract (the like—damage to cargo)..... 155
contract, supplies (in rem)..... 142
costs, bill of..... 336
costs, marshal's, as caretaker, notice of motion to set aside order allowing..... 334
costs, marshal's, as caretaker, order denying motion.. 335
costs, marshal's, as caretaker, order for.... 334
costs, marshal's as caretaker, petition for.... 332
costs, stipulation for by libelant..... 245
costs, stipulation for by respondent..... 246
cross-libel, order for consolidation with libel. 286
damages to personal effects (see Marine Insurance)
damages to cargo (see Marine Insurance)
damages, personal injuries (see Tort and Damage)
damages (see Limitation of Liabilty)

ADMIRALTY (Continued).
deceased libelant, petition by administrator to prosecute for..... 310
decrees, caption to.. 262
decrees, confirming commissioner's report.... 293
decrees, dismissing libel..... 290
decrees (the like)..... 291
decrees, final in case of collision..... 296
decrees, final in case of insurance..... 296
decrees, final in case of money claim..... 300
decrees, final, and for sale..... 298
decrees, final, in case of salvage..... 294
decrees, for libelant, with reference to commissioner.. 292
decrees (the like) in case of damage..... 293
decrees limiting liability..... 304
decrees, motion for and findings in accordance with mandate 259
decrees of reversal after mandate..... 307
decrees (the like) in District Court..... 309
decrees sustaining exceptions to answer..... 287
default, order of condemnation by..... 266
default, order for entry of on proclamation.. 264
default, order for entry on return of monition 263
default, order to take libel pro confesso for default of answer..... 265
demurrage, libel.. 99
demurrage, libel, detention in loading..... 103
desertion, order dismissing libel for..... 271
dismissal, decree of 290
dismissal (the like)..... 291
dismissal of libel, order of, for desertion.... 271
exceptions, answer to.. 321
exceptions to answer..... 322
exceptions to answer, decree sustaining..... 287
exceptions to commissioner's report..... 323

ADMIRALTY (Continued).
exceptions to commissioner's report, order sustaining 283
exceptions to libel..... 318
exceptions to libel, order sustaining..... 269
exceptions to libel, order sustaining and allowing amendment..... 270
execution, writ of after final decree..... 337
findings, motion for and decree in accordance with mandate..... 259
freight, answer to libel for..... 207
freight charges, libel (see Contract)
information, libel of..... 192
injunction..... 339
insurance (see Marine Insurance)
interrogatories annexed to libel in rem..... 195
interrogatories, answer to..... 224
intervention, consent to include crew in libel of salvage..... 336
intervention, libel in (see libels)
intervention, monition to cite to answer..... 228
intervention, stipulation by intervenor..... 247
judgment, order for summary, and confirming commissioner's report 282
libels, average..... 84
libels, bottomry..... 87
libels, charter-party..... 91
libels (the like)..... 95
libels, collision, general scheme of..... 109
libels, collision, in personam, damages..... 114
libels, collision, steam and sail..... 117
libels, collision, steam and steam..... 110
libels, commencements of, in personam v. master 78
libels, commencements of, in personam v. owner or other person..... 79

ADMIRALTY (Continued).
libels, commencements of, in rem v. vessel, cargo and freight..... 80
libels, commencements of, in rem v. vessel... 79
libels, commencements of, in rem v. freight and in personam v. master..... 80
libels, commencements of, in rem v. vessel and in personam v. master..... 79
libels, commencements of, for warrant of arrest for personal damage.. 80
libels, conclusions of, in personam..... 81
libels, conclusions of, in rem v. cargo..... 83
libels, conclusions of, in rem v. vessel..... 81
libels, conclusions of, in rem v. vessel, cargo and freight..... 82
libels, conclusions of, in personam for warrant of arrest..... 82
libels, contract, freight charges in personam. 129
libels, contract (the like)..... 126
libels, contract, Marine Insurance..... 149
libels, contract (the like)..... 151
libels, contract (the like), damage to personal effects.. 153
libels, contract (the like), damage to cargo.. 155
libels, contract, in rem, supplies..... 142
libels, contract with passenger, breach of.... 131
libels, cross, by way of answer..... 194
libels, demurrage..... 99
libels, demurrage, detention in loading 103
libels, exceptions to..... 318
libels of information..... 192
libels in intervention, collision,.... 119
libels in intervention by administrator..... 122
libels in intervention, in rem, contract for repairs and material..... 148
libels in intervention, in rem, contract for supplies 144

ADMIRALTY (Continued).
libels in intervention, contract with passenger 137
libels in intervention, salvage..... 175
libels in intervention (the like)..... 178
libels, limitation of liability, caption of by owner 158
libels, limitation of liability, petition for, personal injuries 158
libels, limitation of liability (the like)..... 164
libels, marine insurance (see Contract)
libels, nature of under admiralty rules..... 76
libels, parties respondent 77
libels, personal injuries (see Tort and Damage)
libels, pilotage, out, and in..... 181
libels, pilotage, offered and refused..... 183
libels, pilotage (the like), another form..... 184
libels, possessory, to obtain ship 187
libels, possessory, to obtain merchandise.... 188
libels, petitory, to establish title to ship.... 190
libels, respondentia 89
libels, salvage, in rem..... 171
libels, skeleton of..... 78
libels, tort and damage, in rem, personal injuries... 167
libels, tort and damage, in personam, personal injuries.. 169
libels, towage 186
libels, wages 180
libels, verification of, in rem, by agent..... 328
libels, verification of, by proctor, for absent libelant..... 326
limitation of liability, caption of libel by owner.. 158
limitation of liability, claim on petition for.. 200
limitation of liability, decree 304

ADMIRALTY (Continued).
limitation of liability, monition in..... 229
limitation of liability (the like)..... 230
limitation of liability, order appointing trustee to take transfer of ship..... 275
limitation of liability, order for appraisement 275
limitation of liability, order for monition.... 279
limitation of liability, order on petition..... 302
limitation of liability, order for transfer of ship to trustee..... 277
limitation of liability, petition for, for personal injuries 158
limitation of liability (the like)..... 164
mandate, motion for findings and decree in accordance with 259
marine insurance, answer 211
marine insurance (the like) 213
marine insurance, answer by stipulation.... 220
marine insurance, final decree in..... 296
marine insurance, libel in..... 149
marine insurance (the like)..... 151
marine insurance (the like), damage to personal effects 153
marine insurance (the like), damage to cargo 155
marshal, motion for order to return..... 261
marshal, notice of motion to set aside order for costs as caretaker 334
marshal, order denying motion 335
marsnal, order for costs as caretaker..... 334
marshal, petition for order 332
marshal, order directing to release ship..... 267
monitions, to cite to answer libel in intervention 228
monitions, to cite to appear 225
monitions, to cite to appear in personam.... 227

ADMIRALTY (Continued).
monitions, in limitation of liability..... 229
monitions (the like) 230
monitions, order for on limitation of liability 279
monitions, praecipe for 327
motion, affidavit on for sale of ship as perishable 332
motion for findings and decree after mandate 259
motion for order to marshal to return ship.. 261
motion for order for process..... 260
motion for order to sell ship..... 259
notices of appeal by libelant (see Appeal)
notices of motion for interlocutory order of sale 262
notices of motion to set aside order for marshal's costs as caretaker 334
nunc pro tunc, order for filing amended libel. 263
oath of appraiser.. 324
order allowing appeal (see Appeal).
order appointing trustee to take transfer of ship 275
order for appraisement on petition for limitation of liability 275
order for appraisement and delivery of perishable goods..... 269
order, caption to 262
order, condemnation by default 266
order, confirming report of commissioner and for summary judgment 282
order, consolidation of libel and cross-libel.. 286
order, decree 274
order, decree, salvage 274
order, denying motion to set aside order for costs as caretaker 335
order, directing marshal to release ship.... 267
order, dismissing libel for desertion..... 271

ADMIRALTY (Continued).
order, entry of default on return of monition 263
order, entry of default on proclamation..... 264
order, filing amended libel nunc pro tunc.... 263
order to file mandate..... 307
order, granting hearing 273
order, issue of warrant of arrest in rem..... 284
order, leave to file supplemental answer..... 271
order, limitation of liability..... 302
order, marshal's costs as caretaker..... 334
order, monition for limitation of liability.... 279
order, proclamation.. 271
order, on proclamation for entry of default.. 264
order, reference to commissioner 281
order, rehearing.. 272
order, reversing decree after mandate..... 307
order, sale, interlocutory 267
order, sale of vessel found perishable..... 268
order, to show cause.. 284
order, staying proceedings, by endorsement.. 273
order, substitution of administrator for libelant 263
order, sustaining exceptions to libel..... 269
order sustaining exceptions to and allowing amendment 270
order sustaining exceptions to report of commissioner 283
order, to take libel pro confesso for want of answer 265
order, transfer of ship to trustee..... 277
parties respondent (see Libel)
passenger, libel by, for breach of contract... 131
perishable goods, affidavit, motion for sale of ship as 332
perishable goods, order for appraisement and delivery of 269

ADMIRALTY (Continued).
perishable vessel, order for sale of 268
personal injuries, answer to libel for..... 216
personal injuries, libel (see Libel, tort and damage)
petitions by administrator to prosecute for deceased libelant... 310
petitions for allowance of appeal (see Appeal)
petitions to bring in vessel under A. R. 59... 313
petitions in intervention in libel for breach of contract with passenger 137
petitions, limitation of liability 158
petitions (the like) 164
petitions by marshal for compensation as caretaker 332
petitions by receiver for order for return of ship 311
petitions for rehearing 316
petitory libel 190
pilotage, libel (see Libel)
possessory libel (see Libels)
praecipe for appearance of claimant 331
praecipe for monition 327
process, motion for order for..... 260
proclamation, order for 271
proclamation, order for entry of default on.. 264
pro confesso, order to take libel for, for default of answer 265
publication (see Affidavit)
receiver, petition by for order for return of ship 311
rehearing, order granting 272
rehearing (the like) 273
rehearing, petition for 316
release of ship, bond to obtain..... 253
release of ship, order directing..... 267

ADMIRALTY (Continued).
release of ship, return to writ after, on bond 240
release of ship, stipulation for after appraisement 251
release of ship, stipulation for on filing bond. 250
replication to claim and answer..... 221
respondentia, libel in..... 89
respondentia, bond in..... 257
return to admiralty seizure..... 328
return to warrant of arrest of ship, and citation 235
return to writ after release of ship on bond.. 240
return to writ of attachment of ship..... 240
rules, nature of libels under..... 76
rules, petition to bring in vessel under rule 59 313
sale, affidavit on motion for, of ship as perishable 332
sale, decree for 298
sale, motion for order of, of ship..... 259
sale, notice of motion for interlocutory order of 262
sale, interlocutory order 267
sale, interlocutory order of ship found perishable 268
salvage, consent to include other members of crew in libel of intervention..... 336
salvage, final decree in..... 294
salvage, libel in rem..... 171
salvage, order for decree 274
satisfaction piece 339
seizure, return to 328
stay of proceedings, order for..... 273
stipulations (see also Bonds)
stipulations by claimant 249
stipulations consenting to include other members of crew in libel of intervention for salvage 336

ADMIRALTY (Continued).
stipulation for costs by libelant 245
stipulation for costs by respondent..... 246
stipulation by intervenor 247
stipulation for release of ship after appraisement 251
stipulation for release of ship on filing bond. 250
substitution of claimant 326
substitution, order for of administrator of libelant 263
summary judgment (see Judgment)
supplemental answer, order for leave to file.. 271
supplies, libel in rem..... 142
tort and damage, libel in personam, personal injuries 169
tort and damage, libel in rem..... 167
tort, warrant of arrest in..... 233
towage, libel 186
verification of claim by agent..... 327
verification of claim by agent, libel in rem.. 328
verification by proctor for absent libelant.... 326
wages, libel 180
warrant of arrest, in personam..... 232
warrant of arrest, with attachment clause and summons to garnishee..... 233
warrant of arrest, cause of tort..... 233
warrant of arrest of ship 234
warrant of arrest, conclusion of libel for.... 82
warrant of arrest in rem, order for issue.... 284
warrant of arrest of ship, return to..... 235
writ of attachment of ship and return..... 238
writ of execution after final decree..... 337
ADMISSION for purposes of suit, general form in answer 328
of service (see Service)

AFFIDAVITS (see Equity)
of complaint under Chinese Exclusion Act.. 61
to obtain commission to take deposition de bene esse under E. R. No. 70..... 761
to obtain order for deposition de bene esse under R. S. U. S. sec. 863..... 761
of service on U. S..... 60
for leave to sue in forma pauperis..... 663
in support of petition for removal of cause on ground of local prejudice..... 797
ALLEGATIONS in answers, ignorance..... 529
in answers on information and belief..... 529
in answers, qualified denial..... 530
in answers, reference to schedule..... 530
in answers, settled account 530
in bills relating to patents (see Patents)
AMENDMENT to bill 499
to declaration, action at law..... 6
AMENDMENTS, orders for (see Equity)
ANSWERS (see under various headings)
(see Actions at Law)
(see Equity)
(see Admiralty)
APPEAL in admiralty, assignment of error in suit on marine insurance 870
in admiralty (the like) 871
in admiralty (the like) 872
assignment of error, suit on insurance policy, overruling demurrer to evidence..... 866
assignment of error, suit for infringement of patent 863
assignment of error (the like) 867
assignment of error (the like)..... 868
assignment of error, damages selling patented goods 862
assignment of error, cancellation of land patent 860

APPEAL (Continued).
assignment of error, common assignments... 859
assignment of error, commencement, general form 858
assignment of error (the like) in admiralty... 859
assignment of error, on appeal from interlocutory injunction under sec. 7, Evarts Act.. 868
bill of exceptions, action at law..... 821
bill of exceptions, action on patent 822
bill of exceptions, No. 2, on conclusion of case 825
bill of exceptions and demurrer to evidence.. 834
bill of exceptions, No. 1, on overruling of demurrer 824
bill of exceptions, notice of application for extension of time to prepare bill and demurrer to evidence.. 820
bill of exceptions, notice of dissent from proposed amendments to 829
bill of exceptions, objections to..... 826
bill of exceptions, order for amendment..... 830
bill of exceptions, order extending time to file 821
bill of exceptions, order allowing..... 833
bill of exceptions (the like), and demurrer to evidence 839
bill of exceptions, order settling 832
bill of exceptions, order settling, short form.. 839
bond on writ of error 875
bond (the like) 875
bond on appeal under Sec. 7, Evarts Act..... 876
bond, appeal 878
bond (the like) 882
bond (the like), in admiralty..... 879
bond (the like), in admiralty 880
bond, order to show cause against petition for summary judgment against sureties to.... 931

APPEAL (Continued).
bond, order for summary judgment against sureties to 930
bond, order for summary judgment against sureties to 932
citation to circuit court of appeals or supreme court U. S., with return and marshal's fees 890
citation and admission of service 892
citation in admiralty 893
citation (the like), with return 894
citation, marshal's return to 896
certificate of clerk under Rule 9, Supreme Court 909
certificate of questions by circuit judges..... 910
certificate by clerk to transcript..... 922
decree on appeal from report of special master..... 631
decree after mandate 932
demurrer to evidence, and bill of exceptions 834
judgment, error to state court 908
mandate to district court 897
mandate to circuit court..... 899
mandate from Supreme Court U. S..... 901
notice of by defendant from taxation of costs 673
notice of taxation of costs, points on..... 671
notice of to district court under Chinese Exclusion Act 65
notice of application for extension of time to prepare bill of exceptions and demurrer to evidence..... 820
notice of dissent from proposed amendments to bill of exceptions 829
notice of filing bill of exceptions and demurrer to evidence..... 840
notice of, oral, by plaintiff suing in forma pauperis 843

APPEAL (Continued).
notice of, by libelant in admiralty..... 855
notice (the like), by respondent..... 856
objections to proposed bill of exceptions..... 826
oral notice of by plaintiff suing in forma pauperis 843
order allowing, on petition by plaintiff, patent case 849
order allowing, after mandate on former appeal with directions as to record..... 851
order allowing, against interlocutory injunction under sec. 7, Evarts Act..... 854
order allowing, in admiralty 858
order allowing bill of exceptions..... 833
order allowing amendments to..... 839
order allowing writ of error..... 841
order allowing in forma pauperis..... 844
order for amendment to bill of exceptions.. 830
order dismissing cause on call..... 928
order dismissing cause on motion..... 928
order dismissing cause for failure to print transcript 928
order dismissing cause under Sup. Ct. Rule 16, and Cir. Ct. App. Rule 22..... 929
order extending time to file bill of exceptions and demurrer to evidence..... 821
order extending time to sue out and serve writ of error 914
order extending time to file writ of error.... 915
order extending time to file transcript..... 920
order fixing amount of bond on writ of error 873
order fixing amount of bond on appeal, pursuant to stipulation 882
order on petition on appeal 847
order reversing decree after mandate (see Admiralty)
order on petition for certiorari..... 913

APPEAL (Continued).
order to send up original exhibits..... 922
order setting bill of exceptions..... 832
order (the like) and demurrer to evidence.... 839
order for summary judgment against sureties to appeal bond 932
order to show cause on petition for summary judgment against sureties to appeal bond.. 931
petition on from District Court and allowance 845
petition on from Circuit Court, with supersedeas 847
petition for order allowing appeal in patent case 848
petition for order allowing appeal from final decree, after mandate on former appeal.... 850
petition for order allowing appeal against interlocutory injunction under sec. 7, Evarts Act 853
petition for allowance of in admiralty..... 856
petition (the like) 857
petition for certiorari 911
petition, prayer in for certiorari for diminution of record.. 913
petition for rehearing after appeal..... 923
petition for summary judgment against sureties to appeal bond 930
petition for writ of error and supersedeas by defendant 841
petition for writ of error by defendant..... 842
petition for writ of error in forma pauperis.. 843
praecipe for appearance in Supreme Court.. 904
praecipe for transcript 921
stipulation as to amount of bond..... 882
stipulation as to making up record..... 916
stipulation as to printing record..... 917

APPEAL (Continued).
stipulation (the like) 919
Supreme Court U. S., assignment of errors.. 907
Supreme Court U. S., joinder in error..... 908
Supreme Court U. S., motion to dismiss or affirm 904
Supreme Court U. S., motion, grounds for.... 905
Supreme Court U. S., notice of submission of motion to dismiss 906
Supreme Court U. S., praecipe for appearance 904
waiver of joinder on appeal..... 915
writ, certiorari.. 914
writ of error to District or Circuit Court, and answer 884
writ of error to District Court of Territory.. 888
writ of error, introduction to in writ to District Court 889
writ of error, order allowing 841
writ of error, order allowing in forma pauperis 844
writ of error to State Supreme Court..... 886
APPEARANCE for defendant in equity..... 657
praecipe for on removal of cause..... 813
praecipe for in Supreme Court U. S..... 904
ASSIGNMENT of error (see Appeal)
of error on appeal under sec. 7, Evarts Act.. 868
of error under Chinese Exclusion Act..... 72
of error on appeal in Supreme Court U. S.... 907
ATTACHMENT against witness de bene esse... 766
AVERMENTS in bills relating to patents (see Patents, Allegations in Bills)
BANKRUPTCY, account, oath to, by trustee.... 423
account of trustee 422
account of trustee, order approving..... 424
adjudication of bankruptcy..... 377

BANKRUPTCY (Continued).
adjudication that debtor is not a bankrupt.. 375
adjudication, summons to witness..... 397
affidavit (see Oath)
affidavit to account by trustee 423
affidavit of lost note or bill..... 407
agent of creditors, proof of claim by..... 404
agent of creditors, proof of secured debt by.. 406
answer (see Denial of Bankruptcy)
application of bankrupt for confirmation of composition 435
application of bankrupt for discharge..... 430
application of bankrupt, notice to creditors of 431
application of bankrupt, order of hearing on. 431
appointment of trustee by creditors..... 389
appointment by referee 390
appraiser, appointment, oath and report..... 378
appraiser, inventory of, with oath and report 378
assets, trustee's return of no assets..... 421
attorney in fact, authority of, to appear for creditor (see Power of Attorney)
attorney in fact of creditor, proof of claim by 404
bankrupt, examination of..... 396
bankrupt, notice to creditors of application of, for discharge 431
bankrupt, order for examination of..... 395
bankrupt, order granting discharge to..... 431
bankrupt, order for hearing, on application of, for discharge 431
bankrupt, petition of, for discharge..... 430
bond of petitioning creditor 373
bond of referee 382
bond of trustee 392
bond to marshal 374

BANKRUPTCY (Continued).
certificate, by referee to judge 429
claims (see Proofs of Claims)
claims, list of allowed, and entitled to dividends 411
claims, list of, proved at first meeting..... 385
claims, order expunging 410
claims, order reducing 409
composition, application for confirmation of.. 435
composition, order confirming 436
composition, order of distribution on..... 437
composition, petition for meeting to consider. 434
corporation, proof of claim by..... 401
creditors, appointment of trustee by, at first meeting 389
creditors, list of, by referee, who have proved their debts 385
creditors, notice to, of first meeting..... 384
creditors, order of notice to, of application for a discharge 431
creditors, petition (involuntary) by..... 365
creditors, powers of attorney by (see Powers of Attorney)
creditors, proof of claim by..... 398-406
debtor, petition of, with schedules..... 343
debts, list of proved at first meeting..... 385
denial of bankruptcy..... 369
discharge, notice to creditors of application for 431
discharge, order granting 433
discharge, order for hearing on application for 431
discharge, petition of bankrupt for..... 430
discharge, specifications in opposition to.... 432
dividend, list of claims entitled to..... 471
dividend, notice of 412

BANKRUPTCY (Continued).
examination of bankrupt or witness..... 396
examination, order for 395
exemptions, trustee's report 420
first meeting of creditors, notice of..... 384
first meeting, list of debts proved at..... 385
inventory of appraisers..... 378
jury, order for jury trial..... 379
letter of attorney (see Power of Attorney)
lien, petition and order for redemption of property from 414
list of claims and dividends by referee for trustee 411
list of debts proved at first meeting 385
lost bill or note, affidavit of..... 407
marshal's special warrant to..... 371
meeting, notice to creditors of first meeting. 384
meeting, list of debts proved at..... 385
memorandum by referee, of creditors who have proved their debts at first meeting... 385
memorandum, by referee, of choice of trustee, at first meeting 389
note, affidavit of lost 407
notice to creditors, of application for a discharge, order for 431
notice to creditors of first meeting..... 384
notice of dividend 412
notice of petition for removal of trustee..... 426
notice to trustee of his appointment..... 391
oath (see Affidavit)
oath of appraisers 378
oath of office or referee 382
oath of trustee, to final account..... 423
order appointing appraisers..... 378
order approving trustee's bond 393
order appointing trustee 390

BANKRUPTCY (Continued).
order discharging trustee 424
order expunging claim 410
order reducing claim 409
order for choice of new trustee..... 428
order confirming composition 436
order of distribution on composition 437
order of reference by judge..... 380
order of reference by clerk in judge's absence 381
order for examination of bankrupt..... 395
order for hearing and notice on application of bankrupt for discharge 431
order for jury trial 370
order for removal of trustee 427
order for sales (see Petition)
order granting discharge 433
order that no trustee be appointed..... 394
order to show cause upon creditor's involuntary petition 367
partners, petition of, with schedule..... 362
partnership, proof of debt by..... 403
petition of bankrupt for discharge..... 430
petition of creditors to have debtor adjudged bankrupt 365
petition of copartnership debtors, with schedule 362
petition of debtor, with schedules..... 343
petition of debtor, schedule A.....346-351
petition of debtor, schedule B.....352-359
petition of debtor, summary of debts and assets 360-361
petition for removal of trustee..... 425
petition for meeting to consider composition. 434
petition and order for private sale..... 417
petition and order for redemption of property from lien 414

BANKRUPTCY (Continued).
petition and order for sale by auction..... 413
petition and order for sale of perishable property 419
petition and order for sale subject to lien.... 416
petition, order to show cause upon creditor's petition 367
power of attorney (see Attorney)
power of attorney, general 386
power of attorney, special..... 388
proof of claim by agent or attorney of creditor 404
proof of claim by corporation..... 401
proof of claim by creditor, with security.... 400
proof of claim by creditor, without security.. 398
proof of claim by partnership creditor..... 403
proof of claim of secured debt by agent..... 406
proof of claim of unsecured debt..... 398
proxy to vote at creditor's meetings..... 386
proxy, special to vote 388
redemption from lien, petition, and order for 414
referee, adjudication of bankruptcy by, upon debtor's petition 377
referee, appointment of trustee by..... 390
referee, bond of 382
referee, certificate by, to judge..... 429
referee, list of claims allowed and entitled to dividends by 411
referee, memorandum of, of choice of trustee 389
referee, memorandum of, of creditors who have proved their debts..... 385
referee, notice by, to creditors, of first meeting 384
referee, notice by, to creditors, of application for a discharge 431
referee, oath of 382

BANKRUPTCY (Continued).
referee, order by, appointing appraisers..... 378
referee, order by discharging trustee..... 424
referee, order by, expunging claim..... 410
referee, order of reference to, by judge..... 380
referee, order in judge's absence..... 381
reference, order of, by judge..... 380
reference, order in judge s absence..... 381
removal of trustee (see Trustee)
report of appraisers 378
report of trustee 422
report of trustee as to exemptions of bankrupt 420
return of trustee, where there are no assets. 421
sales (see Petition)
schedule (see Petition)
specifications of opposition to discharge..... 432
subpoena to alleged bankrupt..... 368
summons to witness 397
trial, order for jury trial..... 370
trustee, account of 422
trustee, appointment of, by creditors..... 389
trustee, appointment of, by referee..... 390
trustee, bond of 392
trustee, bond of, order approving..... 393
trustee, notice of dividends..... 412
trustee, order d scharging 424
trustee, order for choice of new..... 428
trustee, order that no trustee be appointed.. 394
trustee, order for removal of..... 427
trustee, petition of, to relieve property from liens 414
trustee, petition for removal of 425
trustee, petition, notice of 426
trustee, report of exempted property..... 420
trustee, return of when there are no assets.. 421

BANKRUPTCY (Continued).
warrant, special, to marshal..... 371
witness, examination of 396
witness, summons to 397
BILLS OF EXCEPTION (see Appeals)
BILLS IN EQUITY (see Equity)
BOARD OF GENERAL APPRAISERS (see General Appraisers, Board of)
BOND on admiralty appeals..... 879
(the like) 880
on appeal 878
(the like) 882
(the like) under sec. 7, Evarts Act..... 876
(the like) order for summary judgment against sureties to..... 932
(the like) petition for summary judgment against sureties to..... 930
(the like) order fixing amount of, pursuant to stipulation 882
(the like) stipulation fixing amount of..... 882
on injunction 589
on removal of cause (see Removal of Causes)
on restraining order 583
on writ of error 873
(the like) 875
(the like) order fixing amount of 873
CERTIFICATE
and caption to depositions de bene esse 765
of questions by Circuit Judges to Supreme Court 910
by clerk to copy order for service on Board of General Appraisers 38
by clerk to record on transfer of cause from territorial to Federal court 801
by clerk on removal of cause 811
by clerk to transcript on appeal 922

CERTIFICATE (Continued).
by clerk under Sup. Ct. Rule 9 909
by counsel to demurrer 502
by counsel to plea 517
by master 621
to depositions 755
by examiner at close of testimony 752
to depositions by interrogatories and return.. 770
receivers (see Receivers)
CERTIORARI (see Writ)
order on petition for writ on appeal 913
order for, on removal of action against revenue officer 806
petition for, on appeal 911
for diminution of record, prayer in petition for on appeal 913
writ of, on appeal 914
writ of, for removal of action against revenue officer 807
writ of, on removal of cause on ground of local prejudice 798
(see Supreme Court U. S.)
CHINESE EXCLUSION ACT, affidavit of complaint 61
assignment of errors 72
commissioner's findings and order 63
exceptions, bill of 68
joinder in error 73
judgment of District Court 67
notice of appeal to District Court 65
order to take depositions 66
petition for writ of error 71
warrant to apprehend 62
writ of error 74
CIRCUIT COURT, mandate to on appeal 899

CIRCUIT COURT OF APPEALS, citation to, return and fees 890
order dismissing cause under Rule 22 of..... 929
CIRCUIT JUDGES, certificate of questions by to Supreme Court 910
CITATION on admiralty appeal 893
(the like) 894
on appeal, admission of service on 892
on appeal, marshal's return to 896
to Circuit Court of Appeals or Supreme Court 890
COMMISSIONER, return of with depositions... 759
CONSTRUCTION OF FEDERAL STATUTES, removal of cause for 779
COPYRIGHT, bill for infringement of 737
order for perpetual injunction 595
COSTS, appeal from taxation of, notice of..... 673
appeal from taxation of, points on 671
in equity (see Equity)
notice of appeal from taxation of 673
objections to 668
CROSS-COMPLAINT, and answer 539
CROSS-INTERROGATORIES 769
CUSTOMS, affidavit of service on U. S..... 60
clerk's certificate to copy, order and return.. 38
complaint to recover drawback..... 49
counts in information, importing ship and port unknown 57
counts in information, merchandise found concealed 58
counts in information, merchandise secretly landed 59
counts in information, ship owner unknown and goods not in manifest..... 59
findings and conclusions, action at law..... 39
information under revenue laws 55

CUSTOMS (Continued).
judgment (action at law) 43
(the like) 48
order for return by Board of General Appraisers 36
(the like) 36
petition by informer to share in proceeds of forfeited goods 54
petition for remission of penalty 53
petition for review of decision of Board of General Appraisers by Collector 44
petition (the like) by importer 32
DE BENE ESSE (see Testimony de bene esse)
DECLARATION (see Patent)
DECREES IN EQUITY (see Equity)
DECREE AFTER MANDATE on appeal 932
DEDIMUS POTESTATEM, order for writ 756
writ of 758
DEFAULT, praecipe for 657
(see Admiralty)
(see Equity)
DEFENSES in answer, settled account 530
in answer, vexatious suit 530
in answer, want of interest in plaintiff..... 531
DEMURRER and answer 507
plea and answer 508
to answer 515
certificate of counsel to..... 502
to cross-bill 514
in equity (see Equity)
to evidence and bill of exceptions 834
to evidence, assignment of error on appeal.. 866
DEPOSITIONS, certificate and return of interrogatories 770
cross-interrogatories 769
commissioner's return 759

DEPOSITIONS (Continued).
de bene esse (see Testimony de bene esse) and certificate 755
examiner's certificate at close of..... 752
examiner's report 754
interrogatories 768
letters rogatory 772
master's report 746
motion to strike out part of depositions... 773
(the like) 774
motion to suppress depositions and parts of. 775
notice of motion for appointment of special examiner 749
notice of taking testimony orally before examiner 745
notice of taking testimony, short form 748
order appointing special examiner 750
order (the like), to take testimony of distant witness orally 753
order for dedimus potestatem 756
order extending time to take 752
order fixing time and place for taking 750
order on motion to strike out part of deposition 774
order on motion to suppress 776
order referring cause to master in chancery. 746
order to take under Chinese Exclusion Act. 66
order to open and publish 777
order for re-examination of witness 778
order to show cause against extension of time 751
report of master 746
report of special examiner 754
petition for order to re-examine witness 777
stipulation for annexing account to 756
stipulation for taking interrogatories before a foreign notary 767

DEPOSITIONS (Continued).
stipulation for use of testimony at trial.... 747
stipulation reserving questions of relevancy and competency of 753
striking out (see Motions and Orders)
suppressing (see Motions and Orders)
under commission, commissioner's return ... 759
writ of dedimus potestatem 758
DIMINUTION OF RECORD, prayer in petition for certiorari, on appeal on account of 913
DISCLAIMER AND ANSWER 535
DISMISSAL OF CAUSE on appeal, on call..... 928
on appeal, on motion 928
on appeal, failure to print transcript 928
on appeal, under Rule 22, C. C. App. and Rule 16 Sup. Ct..... 929
DISTANT WITNESS, order appointing special examiner to take testimony orally 753
DISTRICT COURT, mandate to on appeal 897
DIVERSE CITIZENSHIP (see Removal of Causes)
DOCUMENTS, decree of inspection 572
DRAWBACK, complaint to recover 49
ENROLLMENT IN EQUITY 674
EQUITY, affidavit to bill of interpleader..... 495
affidavit for leave to sue in forma pauperis... 663
affidavit to support application for injunction, patent case 701
affidavit to support application to sue in forma pauperis 663
affidavit to support motion for leave to file bill for appointment of receiver 660
affidavit to obtain order for ne exeat 579
affidavit of posting notice of sale 638
affidavit of publication of notice of sale.... 637
amendment to bill of complaint 499

EQUITY (Continued).
allegations in bills relating to patents (see Patents)
answers, general form of 525
answers, introduction 525
answers, introduction to petition in intervention 616
answers, conclusion 526
answers (another form) 526
answers, and cross-complaint 539
answers and disclaimer 535
answers, supplemental 543
answers, allegations and averments in
answers, accounts, reference to books of.... 527
answers, accounts, refusal of as useless.... 527
answers, admissions for purposes of suit, general form 528
answers, allegation of ignorance 529
answers, allegation on information and belief 529
answers, allegation of qualified denial 530
answers, allegation of reference to schedule. 530
answers, allegation of settled account 530
answers, claims by defendant 528
answers, claiming benefit of same defense to amended as to original bill 531
answers, craving leave to refer for certainty. 528
answers, craving leave to refer to codefendant's answer 528
answers, bill for infringement of trademark. 719
answers in suit to enjoin working of mines. 536
answers, objecting to answer particular interrogatories 534
answers to complaint by corporation as to public lands 683
answers to petition by receiver for leave to borrow 605

EQUITY (Continued).
answers setting up statute of frauds 532
answers, setting up statute of frauds (another form) 533
answers, setting up statute of limitations... 532
answers, setting up statute of limitations (another form) 532
answers, statement to prevent plaintiff calling for production of documents 534
answers, vexatious suit, settled account and claiming benefit of defense as if raised by plea or demurrer 530
answers, want of interest in plaintiff 531
appearance for defendant 657
bill, general frame of 439
bill, charging part 441
bill, direction 440
bill, interrogating part 442
bill, introduction 440
bill, jurisdiction clause 441
bill, prayers, general relief 442
bill, prayers, process 443
bill, prayers, relief 442
bill, stating part 441
bill, title 440
bill, introductions, one plaintiff v. two or more defendants 443
bill, introductions, two or more plaintiffs v. one defendant 443
bill, introductions, assignee of insolvent debtor 446
bill, introductions, corporation v. individual.. 444
bill, introductions, executor v. corporation... 444
bill, introductions, by deaf and dumb person. 446
bill, introductions, husband and wife v. individual 445
bill, introductions, by infants 446

EQUITY (Continued).
bill, introductions, by lunatic 446
bill, introductions, by U. S. v. corporation and citizen 444
bill, introductions, wife (suing alone, v. individuals 445
bill, introductions, by wife as feme sole 445
bill, introductions, wife, by next friend, v. husband 445
bill, introductions, wife, by next friend, v. husband residing abroad 445
bill, prayers for relief, accounting money had and received 451
bill, prayers for relief, accounting by agent.. 454
bill, prayers for relief, accounting and distribution in bill by next of kin 458
bill, prayers for relief (the like, short form).. 458
bill, prayers for relief, of personal estate of testator 453
bill, prayers for relief, rents and profits of real estate 453
bill, prayers for relief, on termination of partnership 452
bill, prayers for relief, appointment of receiver 595
bill, prayer for cancellation of deed 456
bill, prayer, for cancellation of land patent.. 456
bill, prayer for cancellation of will and deed, alleging fraud 456
bill, prayers for relief, damages against agent for mismanagement 455
bill, prayers for relief, to declare trust of personal estate 461
bill, prayers for relief, to declare trust of real estate 460

EQUITY (Continued).
bill, prayers for relief, foreclosure of mortgage 449
bill, prayers for relief (another form) 449
bill, prayers for relief, injunction 462
bill, prayers for relief (the like) 462
bill, prayers for relief (the like), patented machine 463
bill, prayers for relief, interpleader 459
bill, prayers for relief, interpleader by executor 459
bill, prayers for relief, payment of legacies and execution of trusts of will 460
bill prayers for relief, production of deeds and papers 464
bill, prayers for relief, protection of insolvent's estate in bill by assignee 457
bill prayers for relief, to quiet title..... 464
bill, prayers for relief, redemption of mortgage, mortgagee in possession 450
bill, prayers for relief, redemption of mortgage, personal property 451
bill, prayers for relief, reformation of deed for mistake 457
bill, prayers for relief, specific performance. 447
bill, prayers for relief, specific performance (short form) 448
bill, prayers for relief, specific performance of agreement to execute mortgage of indemnity 448
bill, prayers for relief, specific performance of contract to make policy 448
bill, prayers for relief, specific performance, suit by vendor 447
bill, prayers for relief, winding up partnership 454

EQUITY (Continued).
bill, conclusions, prayer for process 465
bill, conclusions, prayer for process against U. S... 465
bill, conclusions, prayer for process, writ of ne exeat 465
bill conclusions, requiring answer to interrogatories 466
bills of complaint, account by broker employed to purchase stocks and to enjoin suit 488
bills of complaint, accounting and injunction on patent 691
bills of complaint, allegations in bills relating to patents (see Patents)
bills of complaint, amendments to 499
bills of complaint, declaration of trust of public lands by adverse holder, conveyance of title and bar of adverse claim 674
bills of complaint, dissolution of partnership and to restrain collection of debts 490
bills of complaint, foreclosure (see Sale and Foreclosure)
bills of complaint, infringement of copyright. 737
bills of complaint, infringement of trademark 719
bills of complaint, injunction 482
bills of complaint, interpleader by purchaser against different persons claiming purchase money 493
bills of complaint, intervention 614
bills of complaint, to perpetuate testimony.. 497
bills of complaint, possession of public lands. 681
bills of complaint to quiet title 468
bills of complaint to quiet title and injunction 471

EQUITY (Continued).
bills of complaint, redemption of personal property 486
bills of complaint, redemption of real property by heir of mortgagor 484
bills of complaint, revivor 496
bills of complaint, sale and foreclosure 466
bills of complaint, supplemental bill for accounting and injunction where patent extended 707
bond on restraining order 583
bond on injunction (see Undertaking)
certificates by counsel to demurrer 502
certificates by counsel to plea 517
certificates by master 621
consent to substitution of receiver 600
costs, clerk's ruling on .....
costs, memorandum of 666
costs, motion to retax 670
costs, notice of appeal from taxation of..... 673
costs, objections to 668
costs, points on appeal from taxation of 671
decrees on account 565
decrees on appeal from report of special master 631
decrees declaring deed a mortgage 569
decrees on dissolution of partnership 566
decrees on foreclosure 559
decrees on directions for sale on decree of foreclosure 560
decrees on perpetual injunction as to copyright 595
decrees on inspection of documents 572
decrees on interpleader, policy of insurance. 571
decrees to quiet title 558
decrees, redemption of chattels 570
decrees, redemption on payment of mortgage. 568

EQUITY (Continued).
decrees, revivor 572
decrees, specific performance 567
decrees, specific performance on purchaser's bill 568
decrees, final, and injunction, trademark.... 783
decrees, final decree after mandate 569
demurrers, classification of 500
demurrers, general form of 501
demurrers, certificate by counsel to 502
demurrers, and answer 507
demurrers, plea and answer 508
demurrers to answer 515
demurrers to cross-bill 514
demurrers to bill of interpleader 506
demurrers that bill does not embrace whole matter 504
demurrers that defendant is answerable to another 504
demurrers that defendant has no interest.... 504
demurrers that plaintiff is not entitled to relief prayed 504
demurrers that plaintiff has no interest 503
demurrers for multifariousness 505
demurrers on ground of statute of frauds... 506
demurrers for noncompliance with rules of court 511
demurrers for want of equity 503
demurrers for want of jurisdiction 509
demurrers for want of jurisdiction and equity 513
demurrers for want of legal power to sue.... 503
demurrers for want of parties 505
demurrers, verification 502
disclaimer, general form of 535
enrollment 674
exceptions to bill 544
exceptions to answer 545

EQUITY (Continued).
exceptions to master's report by plaintiff.... 630
exceptions to master's report by defendant.. 630
injunction on notice or ex parte on undertaking as to damages 587
injunction 589
marshal's return 655
master, findings and conclusions by 627
motions to amend answer 551
motions to amend bill 549
motions to amend by consent 551
motions to add defendant 549
motions to confirm sale 644
motions to dismiss bill by party on coming of age 550
motions to dismiss bill with costs by plaintiff 550
motions to enter decree nunc pro tunc 553
motions to file amended bill 549
motions to intervene 617
motions for judgment 557
motions for leave to file supplemental answer 552
motions to rectify decree or order 554
motions for reference to master 618
motions for rehearing 554
motions for removal of restraining order.... 586
motions to retax costs by plaintiff..... 670
motions to strike out part of depositions..773, 774
motions to suppress depositions and parts.. 775
motions to withdraw demurrer or plea 551
notices of application for leave to file bill for appointment of receiver 659
notices of appeal by defendant from taxation of costs 673
notices claiming exemption of certain property from sale 647
notices of hearing exceptions to answer..... 553

EQUITY (Continued).
notices, general form of notice of motion.... 548
notices of motion to dissolve injunction..... 591
notices of motion for judgment 556
notices of petition to dismiss injunction..... 593
notices of petition by receiver for leave to borrow 604
notices of sale by master 635
objection to confirmation of sale 648
objection to costs 668
orders appointing master to execute deed... 651
orders appointing special master 625
orders appointing receiver 596
orders authorizing borrowing by receiver.... 606
orders confirming master's report 633
orders confirming sale 645
orders denying petition for rehearing..... 577
orders directing filing nunc pro tunc and transmission of record to court of appeals. 578
orders dismissing bill 577
orders dissolving restraining order 594
orders dissolving or continuing injunction on motion 594
orders, entry of mandate and for decree.... 579
orders to file new bond on injunction..... 593
orders, injunction, patent suit 717
orders, inquiry as to damages on injunction. 588
orders, interlocutory decree, with reference to
orders, master, suit on trademark..... 730
orders, intervention introduction (see Intervention)
orders, issue of receiver's certificates 607
orders, leave to amend answer 577
orders, leave to file amendment to bill..... 576
orders, leave to file supplemental bill.. 575
orders, making injunction as to copyright perpetual 595

EQUITY (Continued).
orders, modifying and continuing restraining order 585
orders, pro confesso 573
orders, reference to master 618
orders, restraining order 582
orders, restraining and to show cause, patent suit 712
orders, restraining petition in intervention... 615
orders of substitution 574
orders substituting receiver 600
orders sustaining exceptions to answer.... 576
orders sustaining exceptions to special master's report 633
orders, writ of ne exeat..... 580
petition, appointment of guardian ad litem.. 662
petition to dismiss injunction 591
petition in intervention and bill of intervenor. 614
petition for leave by receiver to borrow..... 601
petition for leave to defend in forma pauperis 664
petition for leave to file supplemental bill... 658
petition for leave to issue certificates by receiver, prayer in 602
petition for leave to sue receiver 642
petition for a rehearing 664
pleas, general form of 516
pleas to part, answer as to residue..... 518
pleas, counsel's certificate to 517
pleas, verification of 517
pleas, account stated 522
pleas, plaintiff not administrator as alleged.. 520
pleas, former suit pending 521
pleas, infancy 520
pleas, to jurisdiction 519
pleas of statute 523
pleas, want of proper parties 522
praecipe for appearance of defendant 657

EQUITY (Continued).
praecipe for default 657
praecipe for subpoena 653
replication to answer 548
replication, order to show cause against issue of restraining order 714
reports by master 624
reports by special master 626
reports by master of execution of deed 652
reports by master and return of sale..... 639
reports by receiver of borrowings and form of certificate issued 609
sales, objections to confirmation of 648
subpoena ad respondendum 654
subpoena alias respondendum 655
summons by master 620
undertaking on injunction 589
writs, ne exeat 581
writs, venditioni exponas 634
ERROR, assignment of, Chinese Exclusion Act.. 72
joinder in under Chinese Exclusion Act..... 73
petition for writ, in Chinese Exclusion Act.. 71
writ of, in Chinese Exclusion Act 74
(see Supreme Court, U. S.)
introduction to writ of..... 889
order extending time to file..... 915
order extending time to sue out and serve.. 914
writ of, Chinese Exclusion Act..... 74
writ of, to District or Circuit Court and answer.. 884
writ of, to District Court of Territory..... 888
writ of, to State Supreme Court..... 886
EVART'S ACT (see statutes March 3, 1891)
EXAMINER'S CERTIFICATE at close of testimony.. 752
report, with depositions..... 754
EXCEPTIONS, bill of, Chinese Exclusion Act... 68

EXCEPTIONS (Continued).
to answer.. 545
to master's report, by plaintiff..... 630
to master's report, by defendant..... 630
EXHIBITS, order on appeal to send up original 922
FEDERAL QUESTIONS (see Removal of Causes)
FEES, marshal's, on citation to Circuit Court of Appeals or Supreme Court U. S..... 890
FINDINGS in action at law (see Customs)
FORECLOSURE and sale, bill for..... 466
directions for sale in decree of..... 560
and sale, notice claiming exemption of certain property from sale 647
GENERAL APPRAISERS, board of, orders for return by.. 36
board of, (the like)..... 46
board of, petition for review by collector.... 44
board of, petition for review by importer.... 32
GUARDIAN AD LITEM, petition for appointment.. 662
HYDRAULIC MINING, removal of cause in State Court relating to..... 784
IGNORANCE, allegation of in answer..... 529
IN FORMA PAUPERIS, affidavit for leave to sue in.. 663
petition for leave to defend in..... 664
notice, oral, of appeal in suit..... 843
order allowing writ of error in..... 844
petition for writ of error..... 843
INFORMATION under Revenue Laws..... 55
counts in (see Customs)
and belief, allegations on in answers..... 529
INFORMER, petition by to share in proceeds of goods forfeited under Revenue Laws..... 54
INJUNCTION, affidavit to support application for 701
answer in suit as to working mines..... 536

INJUNCTION (Continued).
bill for..... 482
bill for, against broker..... 488
bill for, in patent suit..... 691
bond on..... 583
decree of perpetual as to copyright..... 595
decree of..... 589
on notice or ex parte on undertaking..... 587
order dissolving restraining order..... 594
order dissolving or continuing on motion.... 594
order for in patent suit..... 717
order to file new bond..... 593
order for inquiry as to damages payable..... 588
order modifying and continuing restraining order 585
petition to dismiss..... 591
restraining order..... 582
bill for, to restrain collection of debts on dissolution of partnership..... 490
(see Supreme Court, U. S.)
on trademark in final decree..... 733
undertaking on..... 589
INFANCY, plea of 520
INSURANCE, decree of interpleader in suit on.. 571
INTERLOCUTORY DECREE in trademark suit, with reference to master..... 730
INTERLOCUTORY INJUNCTION, appeal from under Evart's Act
(see Appeal)
(see Assignments of Error)
(see Bond)
(see Statutes)
INTERPLEADER, affidavit to..... 495
bill for by purchaser against claimants of purchase money..... 493
decree in suit on policy of insurance..... 571
demurrer to bill..... 506

INTERROGATORIES, certificate and return.... 770
cross.. 769
depositions by..... 768
objections to reply to in answer..... 534
stipulation for taking before foreign notary.. 767
INTERSTATE COMERCE, indictment of railroad president.. 934
INTERVENTION, answer to petition, introduction to.. 616
bill in.. 614
motion to intervene.. 617
motion to show cause against petition..... 615
petition in and bill of intervenor..... 614
JOINDER ON APPEAL (see Waiver)
in error on appeal to Supreme Court, U. S... 908
JUDGMENT on appeal, error to State Court..... 908
of District Court (see Chinese Exclusion Act)
in suits as to national banks (see National Banks)
in suits under Revenue Laws (see Customs)
JURISDICTION, plea to.. 519
LETTERS ROGATORY. 722
LOCAL PREJUDICE (see Removal of Cause for)
MANDAMUS (see Supreme Court U. S.)
MANDATE to Circuit Court on appeal..... 899
to District Court on appeal..... 897
decree after.. 932
order for entry of..... 579
order in admiralty reversing decree after.... 307
order from Supreme Court U. S..... 901
MARSHAL return by.. 655
return to citation on appeal..... 896
return and fees on citation to Circuit Court of Appeals or Supreme Court U. S..... 890
MASTER, report of depositions..... 746
certificate by.. 621
decree on appeal against report..... 631

MASTER (Continued).
exceptions to report of by plaintiff..... 630
exceptions to report of by defendant..... 630
findings and conclusions by..... 627
motion for reference to..... 618
notice of sale by..... 635
order appointing special..... 625
order confirming report of..... 633
order for reference to..... 618
order sustaining exceptions to report of..... 633
report of execution of deed by..... 652
report by 624
report by special..... 626
summons by.. 620
MASTER IN CHANCERY, order referring cause to 746
MINERAL LANDS, removal of cause relating to 780
MINES, answer in suit to enjoin working of.... 536
MORTGAGE of personal property, bill to redeem 486
of real property, bill to redeem..... 484
decree for redemption of personal property.. 570
decree for redemption of real property..... 568
MOTION to dismiss in Supreme Court U. S., grounds for.. 905
to dismiss or affirm in Supreme Court U. S... 904
in equity (see Equity)
in admiralty (see Admiralty)
for order to strike out part of depositions.. 774
(the like) 773
to retax costs in equity..... 670
to suppress depositions and parts of..... 775
MULTIFARIOUSNESS, demurrer for..... 505
NATIONAL BANKS, answer (action at law).... 26
complaint (action at law)..... 22
judgment (action at law)..... 30
removal of cause relating to..... 781

NATIONAL BANKS (Continued).
reply (action at law).. 29
stipulation for amendment of answer..... 28
NE EXEAT, affidavit to obtain order..... 579
order for writ.. 580
writ of.. 581
NOTICES (see Equity)
of appeal, oral, in suit in forma pauperis.... 843
of dissent from proposed amendments to bill of exceptions.. 829
of filing bill of exceptions with demurrer to evidence.. 840
of motion for appointment of special examiner.. 749
to opposite party of examination de bene esse 764
of motion for order of removal of cause (see Removal of Cause)
of removal (see Removal of Causes)
of submission of motion to dismiss in Supreme Court U. S..... 906
of taking deposition de bene esse..... 762
(the like).. 763
of taking testimony orally before examiner.. 745
(the like) short form..... 748
NUNC PRO TUNC, order for filing..... 598
OBJECTIONS to proposed bill of exceptions.... 826
(see Equity)
ORAL notice (see Notice)
testimony, notice of taking before examiner. 745
ORDER, allowing appeal in admiralty..... 858
allowing appeal on plaintiff's petition, patent 849
allowing appeal under Evarts Act..... 854
allowing appeal from final decree after mandate.. 851
allowing bill of exceptions (see Appeal)
allowing writ of error..... 841
allowing (the like) in forma pauperis..... 844

ORDER (Continued).
dismissing cause on appeal on call..... 928
dismissing cause on appeal on motion..... 928
appointing special examiner..... 750
appointing special examiner to take testimony of distant witness orally..... 753
for certiorari on removal of action against revenue officer 806
for dedimus potestatem..... 756
dismissing cause for failure to print transcript... 928
dismissing cause under Supreme Court Rule 16, Circuit Court of Ap. Rule 22..... 929
extending time to file bill of exceptions and demurrer to evidence..... 821
extending time to file writ of error..... 915
extending time to file transcript..... 920
extending time to sue out and serve writ of error.. 914
extending time for taking depositions..... 752
in equity (see Equity)
fixing amount of bond on writ of error..... 873
fixing amount of appeal bond pursuant to stipulation.. 822
fixing time and place of taking testimony.... 750
on motion to suppress deposition..... 776
to open and publish depositions..... 777
on petition on appeal 847
on petition for writ of certiorari on appeal.. 913
for re-examination of witnesses..... 778
remanding cause (see Removal of Causes)
referring cause to master in chancery..... 746
reversing decree in admiralty after mandate. 307
on appeal to send up original exhibits..... 922
settling bill of exceptions..... 832
settling bill of exceptions and demurrer to evidence.. 839

ORDER (Continued).
to show cause against extension of time for taking depositions.. 751
to show cause against petition for summary judgment against sureties to bond..... 932
to strike out part of depositions..... 774
for summary judgment against sureties to appeal bond.. 932
to take deposition under Chinese Exclusion Act.. 66
PARTNERSHIP, bill for dissolution of and injunction to restrain collection of debts..... 490
decree of dissolution 566
PATENT, action at law, answer.. 8
answer (the like) to declaration on two patents.. 16
amendment to declaration.. 6
declaration on reissued patent..... 1
declaration on two patents, one reissued.... 9
stipulation for amendment to declaration.... 5
equity, allegations in bills, viz:
equity, assignment of patent before suit.... 709
equity, death of patentee.. 710
equity, prior adjudication.. 710
equity, reissue of patent 710
equity, affidavit to support application for injunction.. 701
equity, bill for accounting and injunction... 691
equity, order for injunction..... 717
equity, restraining order and order to show cause.. 712
equity, replication to order to show cause.... 714
equity, supplemental bill where extension granted since suit began..... 707
PETITION on appeal from Circuit Court..... 847
on appeal from District Court..... 845
for certiorari on appeal.. 911

PETITION (Continued).
for order allowing appeal from final decree after mandate on former appeal..... 850
for order allowing appeal under Evarts Act.. 853
for order allowing appeal by plaintiff in patent case.. 848
prayer in petition for certiorari for diminution of record.. 913
for order to re-examine witness..... 777
for rehearing after appeal..... 923
for removal (see Removal of Causes)
for remission of penalties under revenue laws 53
for review of decisions of Board of General Appraisers by collector..... 44
for review of decisions of Board of General Appraisers by importer..... 32
by informer to share in proceeds of goods forfeited under revenue laws..... 54
for summary judgment against sureties to appeal bond.. 930
for writ of error with supersedeas by defendant 841
for writ of error (the like) another form.... 842
for writ of error in forma pauperis..... 843
PLEAS (see Equity)
certificate of counsel to..... 517
PRAECIPES (see Equity)
for appearance on removal of cause..... 813
in Supreme Court U. S..... 904
for transcript.. 921
PRAYERS for relief in equity (see Equity)
PROHIBITION (see Supreme Court U. S.)
PRO CONFESSO, order to take..... 573
PRODUCTION OF DOCUMENTS, statement to prevent plaintiff calling for, in answer..... 534
PUBLIC LANDS, answer to complaint by corporation.. 683

PUBLIC LANDS (Continued).
bill for declaration of trust and conveyance by adverse holder..... 674
bill for possession of..... 681
QUALIFIED DENIAL, allegation of in answer.. 530
QUIET TITLE, bill to.. 468
(the like) and for injunction..... 471
decree to.. 558
RECEIVER, answer to petition for leave to borrow.. 605
consent to substitution of receiver..... 600
prayer in bill of appointment of..... 595
certificates, form of.. 609
notice of petition for leave to borrow..... 604
order appointing.. 596
order substituting 600
order authorizing borrowing..... 606
order for issue of certificates..... 607
petition of, for leave to borrow..... 601
petition of for leave to issue certificates, prayer in.. 602
petition of, for leave to sue..... 612
report of borrowings and form of certificate. 609
RECORD, stipulation as to making up..... 916
REDEMPTION of personal property, bill for.... 486
of real property, bill for..... 484
decree of personal property..... 570
decree of real property..... 568
REFERENCE to schedule, allegation in answer. 530
REHEARING, petition for..... 664
petition for after appeal..... 923
RELEVANCY of testimony, stipulation reserving questions of 753
REMOVAL OF CAUSES, affidavit in support of petition on ground of local prejudice..... 797
answer and demurrer to plea in abatement.. 814
bond, general form..... 808

REMOVAL OF CAUSES (Continued).
bond, justification of sureties to..... 809
certificate of clerk to record..... 811
certificate of clerk to record on transfer from Territorial to Federal Court..... 801
certiorari (see Writ)
conclusion of petition for..... 817
demurrer and answer to plea in abatement... 814
diverse citizenship (see Petitions For)
federal questions (see Petitions For)
justification of sureties to bond..... 809
local prejudice, affidavit for petition..... 797
local prejudice, petition for..... 796
local prejudice, writ of certiorari for..... 798
motion to remand for lack of jurisdiction.... 815
notice or motion for order..... 810
notice of removal..... 812
order for certiorari for removal of action against revenue officer..... 806
order remanding cause..... 816
order of removal..... 811
order, notice of motion for..... 810
order transferring cause from Territorial to Federal Court..... 800
petition for action against revenue officer, sec. 643, R. S. U. S..... 802
petition for, conclusion of..... 817
petition for, federal questions relating to mines..... 779
petitions for, federal questions, mineral lands..... 780
petitions for, federal questions, injunction, hydraulic mining..... 784
petitions for, federal questions, national bank 781
petitions for, diverse citizenship..... 786
petitions for, diverse citizenship (the like).... 787

REMOVAL OF CAUSES (Continued).
petitions for, diverse citizenship, citizen v. alien .. .. ..

REVENUE LAWS (see Customs)
officer, removal of actions against, petition for under R. S. U. S., sec. 643..... 802
officer, order for certiorari on removal of cause.. 806
officer, writ of certiorari on removal of cause 807
REVIVOR, bill of.. 496
decree of.. 572
RULES OF COURT, demurrer for non-compliance with.. 511
(see Circuit Court of Appeals Rules)
(see Supreme Court Rules)
SALES, affidavit of posting notice of..... 638
affidavit of publishing notice of..... 637
and foreclosure, bill for..... 466
decree of, and foreclosure..... 560
master's notice of sale.. 625
master's report of execution of deed..... 652
master's return of sale..... 639
motion for confirmation of..... 644
notice claiming exemption of certain property from.. 647
objections to confirmation of..... 648
order confirming..... 645
order appointing master to execute deed.... 651
writ of venditioni exponas.....634
SEPARABLE CONTROVERSY (see Removal of Cause For)
SERVICE, admission of, of citation on appeal 892
SETTLED ACCOUNT, allegation of in answer..530
claim of in answer.....530
SPECIAL EXAMINER, notice of motion for appointment of..... 749
order appointing..... 750
order appointing to take testimony of distant witness.. 753
decree on appeal from report of..... 631

SPECIFIC PERFORMANCE, decree of..... 567
decree of on purchasers' bill.....568
STATUTES OF U. S., affidavit to obtain order, sec. 863.. 761
removal of cause involving construction of.. 780
removal of cause involving relating to mines 779
removal of cause involving hydraulic mining 784
removal of cause under sec. 643, R. S. U. S.. 802
STIPULATION, for amendment of complaint, action at law..... 5
for amendment of pleading..... 28
as to amount of bond on appeal..... 882
for annexing account to depositions..... 756
as to making up record..... 916
as to printing record..... 917
(the like) 919
for taking depositions by interrogatories before foreign notary.. 767
for use of testimony at trial..... 747
reserving questions of relevancy of testimony 753
STATUTE, plea of..... 523
of frauds, answer setting up..... 532
of limitations, answer setting up..... 532
March 3, 1891, Evarts Act, assignment of error on appeal under sec. 7..... 868
March 3, 1891, bond on appeal under sec. 7... 876
March 3, 1891, order allowing appeal under sec. 7.. 854
March 3, 1891, petition for order under sec. 7 853
SUBPOENAS, ad respondendum..... 654
ad respondendum, alias..... 655
praecipe for..... 653
ad test. for testimony de bene ese..... 764
supreme court, original jurisdiction..... 948
SUBSTITUTION, order for..... 600
SUMMARY judgment, order for against sureties to appeal bond 932

SUMMARY (Continued).
order to show cause against petition for....931
petition for against sureties to appeal bond.. 930
SUPPLEMENTAL ANSWER (see Answer)
SUPPLEMENTAL BILL, petition for leave to file 658
order for 575
when patent extended..... 707
SUPREME COURT, assignment of error in.... 907
certiorari, writ of..... 946
citation to, with return and marshal's fees.. 890
grounds for motion to dismiss..... 905
injunction, writ of..... 947
joinder in error on appeal..... 908
judgment, error to state court.....908
mandamus, writ of..... 940
mandate from..... 901
motion to dismiss or affirm..... 904
motion to dismiss or ground for..... 905
notice of submission of motion to dismiss.... 906
praecipe for appearance..... 904
prohibition, writ of..... 944
prohibition, rule to show cause against issue of 943
prohibition, return to rule..... 944
rule 9, certificate of clerk under 909
rule 16, order dismissing cause under..... 929
subpoena, original jurisdiction..... 948
SURETIES, to appeal bond, order for summary judgment 932
to appeal bond, petition for summary judgment..... 930
TERRITORIAL COURT, clerk's certificate to record on transfer of cause..... 801
order transferring cause to Federal Court.. 800
petition for order transferring cause to Federal Court.. 800

TESTIMONY, bill to perpetuate..... 497
order for re-examination of witness..... 778
petition for order, re-examination of witness 777
TESTIMONY DE BENE ESSE, affidavit to obtain commission under Equity Rule 70.... 761
affidavit to obtain order for under R. S. U. S. sec. 863..... 761
attachment against witness 766
caption and certificate to depositions..... 765
notice to opposite party of examination..... 764
notice of taking deposition..... 762
(the like).. 763
subpoena ad test..... 764
TRADEMARK, answer to bill for infringement 725
bill for infringement..... 719
final decree and injunction..... 733
interlocutory decree, with reference to master 730
TRANSCRIPT, certificate of clerk to..... 922
order dismissing cause for failure to print.. 928
order extending time to file..... 920
praecipe for..... 921
stipulation as to printing record..... 917
(the like)..... 919
TRANSFER OF CAUSE, from Territorial to Federal Court (see Removal of Causes)
VENDITIONI EXPONAS, writ of..... 634
VERIFICATION of demurrer..... 502
of petition for removal by attorney..... 819
of petition for removal by petitioner..... 818
of plea... 517
VEXATIOUS suit, claim of in answer..... 530
WAIVER of joinder on appeal..... 915
WARRANT of arrest (See Chinese Exclusion Act)
WITNESS, order for re-examination..... 778
petition for order..... 777

WRITS, certiorari on appeal..... 914
certiorari to compel clerk to certify record on removal of cause..... 816
certiorari for removal of cause on ground of local prejudice... 798
certiorari for removal of action against revenue officer 807
dedimus potestatem..... 758
error, Chinese exclusion act..... 74
error, to District or Circuit Court and answer.. 844
of error to District Court of territory..... 888
of error to state Supreme Court.... 886
of error, introduction in writ to District Court 889
of error, order allowing 841
or error, petition for in forma pauperis..... 843
of error by defendant with supersedeas..... 841
of error (the like)..... 842
ne exeat..... 581
venditioni exponas 634
prerogative (see Supreme Court U. S.)

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